82-74

Office - Supreme Court, U.S.
FILED
MAY 17 1982
ALEXANDER L. STEVAS,
CLERK

In the Supreme Court
of the
United States

October Term 1982

No. _____

MARVIN S. ANTELMAN,

Petitioner

vs.

MICHAEL DECATALDO
Revenue Agent

UNITED STATES OF AMERICA and
INDUSTRIAL NATIONAL BANK, and KATHY LAWSON,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST JUDICIAL
CIRCUIT

MARVIN S. ANTELMAN
Petitioner Pro Se
5 Prospect Avenue
Newton, Massachusetts 02160
Tel: (617- 527-5908)

TO: HON. SEYMOUR POSNER
Assistant U.S. Attorney
P.O. Box 1401
Providence, Rhode Island 02901

In the Supreme Court
of the
United States

October Term 1982

No.

MARVIN S. ANTELMAN,
Petitioner

vs.

MICHAEL DECATALDO,
Revenue Agent

UNITED STATES OF AMERICA and
INDUSTRIAL NATIONAL BANK, and KATHY LAWSON,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST JUDICIAL CIRCUIT

Petitioner Marvin S. Antelman prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit , rendered in the above entitled case.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Interval Revenue Service issue a summons against Tivian Laboratories, Inc. in bad faith?
2. Were due process rights of the petitioner violated by the lower courts' refusing to allow him to intervene in a third party summons proceeding?
3. Did the issuance of the summons in itself violate petitioner's right to be protected against unreasonable search and seizure and his due process rights?
4. Does the IRS third party summons procedure unconstitutionally deprive Intervenor of his right to a grand jury proceeding?

TABLE OF CONTENTS

	PAGE
PRAYER	a
ISSUES	b
AUTHORITIES	
Constitutional Law	d
Court Rules	d
Federal Statutes	d
Case Law	e
Treatises	f
OPINION OF THE COURT BELOW	1
GROUNDS FOR JURISDICTION	1
APPLICABLE LAW	2
STATEMENT OF THE CASE	4
GROUNDS FOR FEDERAL JURISDICTION	11
REASONS FOR ALLOWANCE OF THE WRIT	11
CONCLUSION	21
EXHIBITS	23
APPENDIX	39

AUTHORITIES

CITATION	PAGE
CONSTITUTIONAL LAW	
Article III	
Section I	2
Section II	2
First Amendment	2
Fourth Amendment	2
Fifth Amendment	2, 3, 17, 20
COURT RULES	
Supreme Court Rule 17.1 (c)	2
Rule 4 Federal Rules of Civil Procedure	5
FEDERAL STATUTES	
Title 26 USC	
Section 7601	2, 3
Section 7602	3, 11
Section 7609	4, 15, 20
Title 28 USC	
Section 1691	5

AUTHORITIES

CITATION	PAGE
CASE LAW	
Donaldson v. US, 400 US 517 (1971)	14
First National Bank of Mobile v. US, 160 F2d 532 (5th Cir. 1947)	16
Galvan v. Press, 347 US 522 (1954)	14
Government of Virgin Islands v. Toto, C.A. Virgin Islands 529 F2d, 282 (1976)	18
Hubner v. Tucker, 245, F2d 35 (9th Cir. 1951)	16
Local 174 v. US, 240 F2d 387 (9th Cir. 1956)	16
Mackin v. US, 117 US 348 (1886)	18
Maley v. District Court of Woodbury, 226 NW. 815 Iowa (1936)	18
Morton Grove Park District v. American National Bank Trust Company of Chicago, 350 N.E. 2d 146(1976)	13
Powel v. Alabama, 287 US 45 (1932)	15
Reisman v. Caplin, 375 US 440, 449(1964)	16
Rochin v. California, 342 US 16 (1952)	14
See v. Seattle, 387 V. 541, 544 (1967)	16
Slochover v. Board of Higher Education of New York City, 350 US 551 (1956)	14

AUTHORITIES

CITATION	PAGE
CASE LAW (continued)	
US v. LaSalle National Bank, 437 US 298 (1978)	16
US v. Luther, 481 F2d 429 (9th Cir. 1973)	17
US v. Powel, 379 US 48, 57-50, (1964)	16
Venn v. US, 400 F2d 207 (5th Cir. 1968)	16
TREATISES	
Corpus Juris Secundum (CJS) 38 CJS 980	17
Illegal Tax Protesters Threaten Tax System, G.G.D. 81-83, July 8, 1981	13

OPINIONS OF THE COURT BELOW

The opinion of the United States Court of Appeals for the First Judicial Circuit is printed as Exhibit A in the Appendix, annexed to this petition. The order of the United States District Court of Rhode Island is contained in the appendix and marked as Exhibit B. The Order to Show Cause is also contained in the annexed appendix and marked as Exhibit C .

GROUNDS FOR JURISDICTION

Petitioner seeks review of a Memordandum and Order entered on February 22, 1982 in the

United States Court of Appeals, Petitioner cites Rule 17.1(c) of the Rules of the United States Supreme Court and Article III, Sections I and II of the United States Constitution as granting juridsiction to this Court. This case arises from 26 U.S.C. Section 7601 and the First, Fourth and Fifth Amendments of the United States Constitution.

APPLICABLE LAW

Amendment I, United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievance.

Amendment IV, United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Amendment V, United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code Title 26

7601. Canvass of districts for taxable persons and object

(a) General rule. - The Secretary or his delegate shall, to the extent he deems it practible, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

United States Code, Title 26

7602. Examination of books and witnesses

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for

any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized-

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

Aug. 16, 1954, c. 736, 68A Stat. 901

United States Code, Title 26 § 7609 (AP83).

STATEMENT OF THE CASE

The instant action is one in which the IRS attempted to obtain information and data concerning an existing corporation, TILACO CHEMICALS LIMITED, by issuing an IRS Summons against a nonexistent (AP 15) company, Tivian Laboratories Incorporated. The Petitioner in this case, Marvin S. Antelman, has a proprietary interest in specific information

being identified as all financial statements of Tilaco Chemicals Limited for the years 1977, 1978, 1979, and 1980, of which Exhibits A, B, and C are examples; upon which he holds a Common Law Copyright (AP 47). The copyright protects all information in those statements (AP 48-53).

Accordingly, Petitioner initiated an intervention (AP 25-33) when it became apparent to him that these documents were in danger of being turned over to the IRS.

On September 11, 1980, the IRS issued a summons (AP 8-9), Form 2039 to obtain data and information with respect to Tivian Laboratories Inc. Inspection of the summons revealed that it did not have a Court seal as is required by Title 28, USC Section 1691, and Rule 4 of the Federal Rules of Procedure.

The IRS utilized the subterfuge of naming for its discover and investigation bank checking account numbers 43-3377447 and 43-5829809 (AP 9) held by TILACO CHEMICALS LIMITED, a separate and distinct entity from Tivian Laboratories Inc. which it specified in its summons. Tilaco maintained checking accounts at Industrial National Bank doing

business as Tivian Laboratories Co. (EX D) which the name Tilaco is simply an abbreviation of. TILACO CHEMICALS LIMITED is a Delaware Corporation (EX E) while Tivian Laboratories Inc. is now a non existent corporation, formerly incorporated in Rhode Island. This fact was stated in Court on December 29, 1980 when Richard Foster, Tivian's former Attorney stated:

> "To my understanding, your Honor, the Corporation no longer exists so that my position as Attorney for the Corporation has ceased to exist also" (AP 15).

Furthermore, that summons was indeed intended for TIVIAN Laboratories Incorporated and not for TILACO CHEMICALS LIMITED was conceded several times by the IRS.

In its petition to enforce IRS Summons of November 19, 1980, the IRS conceded that it was,

> "conducting an investigation into the tax liabilities for TIVIAN LABORATORIES Inc. for the years 1977, 1978 and 1979 as is set forth in the affidavit of said Michael DeCataldo attached hereto" (AP2) .

DeCataldo's affidavit further conceded that he was

> "conducting investigations into the tax liabilities of Tivian Laboratories Incorporated for the years 1977, 1978, and 1979" (AP 5)

and that it was necessary to investigate the records

sought by the summons,

> "in order to properly investigate and collect the federal tax liabilities of Tivian Laboratories Incorporated for the years 1977, 1978 and 1979" (AP 6).

Nevertheless, the IRS admitted it was collecting subsequent to Judge Pettine's December 30 Order

> "bank records relating and pertaining to Tivian Laboratories, Inc. and Tilaco Chemicals Ltd" (AP 38).

It may be asked as to how the IRS came about Tilaco's checking accounts? The discovery of the accounts was ancillary to investigation of Intervenor's personal income taxes (AP 56-61; AP 69-72) and the summons issued for Tivian's records was only a means of further harassing the Petitioner and gives further credence that it issued in bad faith as is evidenced by the following sequence of events:

1) In a personal income tax litigation, the IRS alleged that Petitioner filed his 1975 1040 Tax late (EX F).

2) To support his contention that he filed on time, Petitioner submitted UPS documents (EX G,H) to prove that his tax returns were sent on time via

UPS.

3) The IRS issued a summons to UPS to obtain shipping records (EXI).

4) Having obtained shipping records of that location, the IRS then utilized this information to trace checks issued by Tilaco's customers to Tilaco's bank accounts at IN Bank in Providence (AP70) and from the endorsement on the checks obtained the TILACO CHEMICALS LIMITED bank account numbers designated in its summons which is the subject of this action leading to the IRS obtaining Petitioner copyrighted financial statements.

Further evidence that the Petitioner was designated for harassment and eventual criminal prosecution by the IRS is evidenced by the following sequence of events:

1) The IRS designated the Petitioner as a Tax Protester (AP56-61) which means he was designated for criminal prosecution (AP69-72).

2) The IRS attempted to serve a second summons upon Petitioner for Tilaco's records (AP 55) on June 12, 1981 by warrantless breaking and entering (AP 54) of Tilaco's premises. This second summons involved a criminal (AP55) investigation as was

conceded by the IRS (AP 66).

These were derivatives of obtaining copies of checks drawn on Tilaco's checking account and the financial statements of Tilaco which is the subject of this appeal.

Revenue Agent, Michael DeCataldo, under oath in his affidavit stated that he had sought the information he had obtained on Tivian Laboratories Incorporated in order to "properly investigate and collect" (AP 6) its tax liabilities, and not to criminally investigate TILACO or to further audit Petitioner's tax returns.

On May 27, 1981, Judge Pettine denied Petitioner's Motion to Intervene (AP80-82). Subsequent to these events, the IRS issued 26 summonses upon Tilaco and its banks (AP 71) and requested information which could be used in a criminal investigation of Petitioner from non corporate entities related to him (AP71; AP 73-76). This action was described by three attorneys as harassment (AP 71).

On July 2, 1981, Tilaco's Accountant, Bernard Labush was visited by Michael DeCataldo and Richard Durant of the IRS. They presented him with

copies of Tilaco's Financial Statements and admitted they had gotten his name from Tilaco's financial statements. They then proceeded to copy his work papers relating to Tilaco (EX J).

The fact that the IRS obtained possession of Tilaco's financial statements (AP70) before Petitioner Due Process remedies had been exhausted was a further breaking of the numerous laws which the IRS has broken in conjunction with this action, such as its violation of Petitioner's Copyrights.

Subsequent to the IRS issuing 26 Summonses, Petitioner believed he had sufficient evidence of bad faith on the part of the IRS and filed a motion to retroactively quash the summons; on the grounds of bad faith and that Tilaco was not properly represented at the enforcement proceedings of December 29, 1980 (AP 12-22;EX K). The IRS filed an objection to this motion (AP 62). Upon the denial of this motion on July 9, 1981 (AP 81), Intervenor appealed (AP 79).

Upon appeal, the First Circuit of the United States Court of Appeals upheld the refusal of the United States District Court for the District

of Rhode Island to allow Petitioner to intervene on behalf of Tilaco Chemicals Ltd. (Feb. 22, 1982. Exhibit A)

In the same Memorandum and Order, the Court of Appeals, Chief Judge Coffin and Circuit Judges Campbell and Bownes declared that:

1. Petitioner had not carried the heavy burden of demonstrating bad faith on the part of the IRS.

2. No allegation had been made that the IRS had made a recommendation of criminal prosecution.

3. Given these facts the Petitioner had no right to intervene or for the other relief sought.

GROUNDS FOR FEDERAL JURISDICTION

The above captioned proceeding was originated by the respondents, Michael DeCataldo, Revenue Agent and the United States of America in the United Stated District Court for the District of Rhode Island pursuant to the statutory authority in Title 26, U.S.C. §7602, granted to the Internal Revenue Service to issue Third party summonses.

REASONS FOR ALLOWANCE OF THE WRIT

The lower court erred in failing to determine that the Internal Revenue Service issued a

summons in bad faith. The initial summons was directed against a non-existent corporation and was employed as a means of obtaining the tax liability of a second corporation. The summons in question was challenged and was followed by numerous summonses clearly setting forth Tilaco Chemicals, Ltd., instead of Tivian Laboratories, Inc. as a target, the latter the originally named corporation.

The summonses followed the malicious and erroneous classification of the Petitioner as a tax protestor. A pattern of coercion and harrasment by the IRS, based upon its mistaken belief (or, arguendo, correct belief) that intervenor Antelman was a "tax protester," in violation of his rights to Freedom of Speech and Association guaranteed by the First Amendment to the Constitution can be inferred from the most recent behavior of the IRS, which included several new summonses.

As part of this pattern, the IRS singled Antelman out as an example in a memorandum dated December 7, 1978, authorizing the exceptional procedure of reopening a previously examined tax year because he was a protester. See Exhibit L.

Furthermore, the IRS has, since 1978, targeted "tax protesters" for criminal inquiry, and in the period since then has increased its targets 156% from 7,100 returns in 1978 to 18,200 returns in 1980, as a method of discouraging "protest." (See Report by the Comptroller General, Ilegal Tax Protesters Threaten Tax System, G.G.D. 81-83, July 8, 1981).

It can be thus construed that Petitioner was selected for audit in order to intimidate him from associating with tax protesters in violation of his First Amendment rights of freedom of association.

The lower court also erred in failing to determine that the District Court violated the Petitioner's Fifth Amendment right to due process of law by failing to allow him to intervene in the third party summons proceeding.

The essential elements of due process at common law include the opportunity to be heard and to defend in an orderly proceeding. (Morton Grove Park District vs. American National Bank Trust Company of Chicago, 350 N.E. 2d 146 (1976). Petitioner was denied his day in court even though the subject matter of the proceeding was to gather evidence to be used

against him in what is likely to be a criminal proceeding. Justice Douglas himself has stated that "the purpose of the summons is to gather evidence for a criminal prosecution." (Donaldson vs. U.S., 400 U.S. 517 (1971).

Petitioner has been denied his right to express his own reasons why the summons should not be enforced. This violated the Petitioner's right to due process of law as defined in Rochin vs. California 342 US 16 (1952).

Due process of law is a summarized constitutional guaranty of respect for the personal immunities which are so rooted in the traditions and conscience of the nation as to be ranked as fundamental or are implicit in the concept of ordered liberty.

In Galvan v . Press, 347 US 522 (1954) it was held that "Due Process bars Congress from enactments that shock the sense of fair play , which is the essence of due process." The protection of the individual from arbitrary action is the very essence of due process of law. Slochover vs. Board of Higher Education of New York City, 350 US 551 (1956.)

By denying petitioner a hearing, as an intervenor, the lower courts denied him a basic element of the constitutional requirement of due process. Powell v. Alabama, 287 US 45 (1932)

Due to the continued pattern of harrassment and litigation the respondent has directed against petitioner, and the close relationship between petitioner and the target of the summons, it is unconscionable to deprive petitioner of the opportunity to be heard.

The lower court also erred in failing to determine that issuance of the summons violated the Petitioner's right to be protected against unreasonable search and seizure as well as his due process rights.

The Internal Revenue Service never provided Statutory notice to Tilaco Chemicals, Ltd., as required by Title 26, Section 7609, (a) (1) which notice was necessitated by the fact that Tilaco records were described, admittedly in somewhat masked fashion, in the summons. Under common law a summons is invalid if all statutory requirements are not met, and hence to enforce it would violate Petitioner's due process rights and rights to be protected

against unreasonable search and seizure, as information pertaining to the Petitioner would surface from an examination of the material the IRS is seeking. Thus, the summons is unenforceable. Reisman v. Caplin, 375 US 440, 449 (1964). United States v. Powel, 379 US 48, 57-50, (1964). United States v. LaSalle National Bank 437 US 298(1978). Clearly the summons which by its very language indicates it seeks records of all financial transactions of Tilaco without limitation is vague and unenforceable, and constitutes an exploratory "fishing expedition." This is particularly the case where those records are those of an entity or individual (ie, Petitioner) other than the taxpayer stated to be under investigation on the face of the summons. The summons was thus in violation of Petitioners Fourth Amendment right against unreasonable searches and seizures. See v. Seattle, 387 V. 541, 544 (1967.) First National Bank of Mobile v. United States, 160 F. 2d 532 (5th Cir. 1947). Hubner v. Tucker 245, F. 2d 35 (9th Cir. 1951) See also Venn v. United States, 400 F. 2d. 207 (5th Cir. 1968). Local 174 v. United States,

240 F.2d 387 (9th Cir, 1956). United States v. Luther, 481 F 2d. 429 (9th Cir. 1973).

The Internal Revenue Service's third party summons procedure is arguably unconstitutional because it prematurely deprives the target of the investigation of his common law, constitutional right to be heard by a grand jury of his peers.

In Corpus Juris Secundum, a grand jury is defined as a:

> body of men who, according to law, are selected and summoned to serve before a competent court and are by such court impaneled, sworn and charged to inquire with regard to crimes committed within its jurisdiction and to present all offenders against the law. It is an inquisitorial and accusatorial, rather than a trial body, and except in some states, is not regarded as a judicial body or tribunal.
>
> 38 CJS 980

The Fifth Amendment of the United States Constitution states:

> No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.

Is a tax crime an infamous crime? The answer to this is an unequivocal "yes". Any crime

in which falsification is an element is an infamous crime at common law. See Mackin v. U.S., 117 US 348 (1886); Government of Virgin Islands v. Toto, C.A. Virgin Islands 529 F2d, 282 (1976).

At this point if one inquires as to whether the grand jury is a right stemming from the common law and under the additional constitutional umbrellas of the Seventh Amendment there is no doubt as to the answer:

> The institution of the grand jury is of very ancient, common law origin. It goes back many centuries to England. Maley v. District Court of Woodbury, 226 NW. 815 Iowa (1936)

The grand jury's inquisitorial function is replaced by the IRS third party summons procedure without any of the safeguards of the former. Probably the greatest damage done to the equal protection and due process rights of the Intervenor is the failure of the federal government to provide unbiased individuals as his "inquisitors" as a grand jury would hopefully provide. A grand jury would provide intervenor with a randomly selected group of individuals who would not have had the same long and unpleasant course of dealings with the

Intervenor as has the IRS. Instead, the IRS, influenced by years of hostility and apparently under the mistaken notion that Intervenor is a tax protestor, is conducting a wide investigation of the Intervenor with the primary motivation apparantly being to punish him for exercising certain First Amendment rights.

There are other safeguards, inherent in the grand jury system which are lacking in the IRS summons procedure. For example, the grand jury is under the supervision of the federal court system whereas the IRS summons procedure is under the executive branch of the federal government and has historically proven to be used for political purposes.

Also in a grand jury, counsel has the opportunity to object to unfit jurors. Obviously in the instant case Intervenor has not had the opportunity to object to any Revenue agents involved in his case, even though their records released pursuant to Freedom of Information Act requests indicate that said agents have classified Intervenor according to religious and political labels.

The particular characteristics of a grand jury in which individuals who are unlikely to know each other or to have knowledge of irrelevant details about the witness, and most importantly, have no emotional feeling as a result of working on the case for years, lend themselves to a far more equitable result for taxpayers in these investigations.

Because the IRS summons procedure violates all of the above safeguards envisioned by our founding fathers when they included the grand jury's role in our Constitution, Intervenor asks this honorable Court to declare Title 26 of the United States Code § 7601, 7602 and 7609 unconstitutional which may be construed to authorize the violation of the Fifth Amendment.

CONCLUSION

The WRIT OF CERTIORARI should be granted, to vindicate the principles of the First, Fourth and Fifth Amendments of the United States Constitution which have been violated by the unrestrained fishing expedition of the Internal Revenue Service against the petitioner.

The petitioner has frequently expressed his political views and is being punished for them. The sheer denial by the District Court to allow the petitioner to raise constitutional objections to summons enforcement on the corporation's behalf, as well as on his own behalf is indicative of a policy which has been tolerated for too long.

To safeguard petitioner's rights and those of other Americans against an agency of the federal government whose name has become synonymous with Inquisition this Honorable Court should review the judgement of the United States Court of Appeals for the First Judicial Circuit.

Respectfully submitted.

Marvin S. Antelman

MARVIN S. ANTELMAN
Petitioner Pro Se
5 Prospect Ave.
Newton, Mass 02160
Tel: (617) - 527-5908

TO: SEYMOUR POSNER ESQ.
Assistant United States Attorney
P. O. Box 1401
Providence, Rhode Island 02901

CERTIFICATION OF MAILING

I hereby certify that on May 11, 1982, I did deliver in hand three copies of the above Petition with Exhibits and Appendix to, Seymour Posner, Esquire at P.O. Box 1401, Providence, Rhode Island 02903, and in hand to the law offices of Stephen Finn, Esq. of the firm Hinckley, Allen Et. Al., counsel for INBANK.

Marvin S. Antelman

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 81-1556.

UNITED STATES OF AMERICA,
AND MICHAEL DECATALDO, REVENUE AGENT,
Petitioners.

v.

INDUSTRIAL NATIONAL BANK, ET AL.,
Respondents.

MARVIN S. ANTELMAN, ET AL.,
Intervenors, Appellants.

BEFORE COFFIN, Chief Judge,

CAMPBELL AND BOWNES, Circuit Judges.

MEMORANDUM AND ORDER

Entered February 22, 1982

On December 30, 1980 the district court ordered enforced an Internal Revenue Service summons directing a bank and its employees to produce certain records of a taxpayer, Tivian Laboratories, Inc., also known as "Tivian Laboratories Co. d/b/a Tilaco Chemicals LTD". On April 16, 1981, appellant Marvin Antelman, whose records are not a subject of the summons, moved to intervene and for a "writ of injunction" aimed at setting aside the IRS summons. The district court denied the motion on grounds of res judicata and also denied subsequent motions to compel discovery and to quash the summons.

Appellant sought to intervene on grounds that his alleged status as a shareholder and president of Tilaco Chemicals Ltd., a corporation, entitled him to standing pursuant to 26 U.S.C. § 7609. The cited section of the Internal Revenue Code confers no such standing on shareholders or officers of a corporate taxpayer. Moreover, only a licensed attorney may represent a corporation in the district court. American Metals Service Export Co. v. Ahrens Aircraft, Inc., No. 81-1185, slip op. at 2 n.2 (1st Cir. Dec. 14, 1981); In re La Colinas Dev. Corp., 585 F.2d 7, 11 (1st Cir. 1978), cert. denied, 440 U.S. 931 (1979).

Appellant's various motions were also based on statements to the effect that IRS wished to examine the corporate records for the light they would shed on appellant's transactions with the corporations. Appellant alleged in this regard that he was the subject of a criminal investigation by IRS. He did not allege that a recommendation of criminal prosecution had been made at the time of the summons enforcement action in the district court, and he has failed to carry the heavy burden of demonstrating bad faith on the part of the IRS. In these circumstances, appellant had no right to intervene or for the other relief sought. See United States v. LaSalle National Bank, 437 U.S. 298 (1978); Donaldson

Best Copy Available

v. United States, 400 U.S. 517 (1971); United States v. Newman, 441 F.2d 165, 172-73 (5th Cir. 1971); United States v. J. Joseph Cartland, Inc., 79 F.R.D. 148, 150-51 (D. Md. 1978).

The orders of the district court are affirmed.*

---

*As appellees correctly note, the notice of appeal was untimely as to the 1980 orders. We accordingly have no jurisdiction over those orders.

By the Court:

Dana K. Gallup

Clerk.

B

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent,	)	
Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,	)	
Respondents	)	

ORDER

This cause came on to be heard before Chief Judge Raymond J. Pettine on December 29, 1980, upon the filing of a Petition to Enforce an Internal Revenue Service Summons with Exhibits attached thereto and the issuance by this Court on December 5, 1980 of its Order to Show Cause why the Respondents should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11, 1980.

Andrew J. Belechinsky, President of Tivian Laboratories Inc., the corporate taxpayer under investigation, whose records are being sought from the Respondents herein, appeared at the December 29, 1980 hearing and read into the record a Special Appearance and Response to the Order to Show Cause, which was filed and made part of the record in this case.

Upon consideration of the pleadings and exhibits herein, it is

O R D E R E D

that the Respondents shall comply with and obey forthwith the Summons, and each and every requirement thereof served upon them on September 11, 1980 and shall produce the books, papers,

25

records or other data required and called for by the terms of said Summons before Michael DeCataldo, Revenue Agent, or any other proper officer or employee of the Internal Revenue Service on January 15, 1981, at 10:00 a.m. at the Internal Revenue Service office, 130 Broadway, Providence, Rhode Island.

By Order,

Lidia Coppola
Deputy Clerk

ENTER:

Raymond J. Pettine

RAYMOND J. PETTINE
Chief Judge
United States District Court

12/30/80

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent, Petitioners	)	80-0595
vs.	)	CIVIL ACTION NO.
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	)	

C

ORDER TO SHOW CAUSE

Upon the Petition, the Exhibits attached thereto, the Affidavit of Michael DeCataldo, Revenue Agent of the Internal Revenue Service, and upon the Motion of Paul F. Murray, United States Attorney for the District of Rhode Island, and Seymour Posner, Assistant U.S. Attorney, it is

ORDERED, that Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, appear before the United States District Court for the District of Rhode Island, presided over by the undersigned in his courtroom in the U.S. Courthouse, in Room 309, Providence, Rhode Island, on the 29th day of December, 1980, at 9:30 a.m. to show cause why they should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11 1980. It is further

ORDERED, that a copy of the Order together with a Petition and Exhibits thereto be personally served upon respondents Industrial National Bank and Kathy Lawson, Assistant Manager, on or before Dec. 10, 1980. It is further

ORDERED, that within 10 days of service of a copy of this Order and the Petition and Exhibits thereto, the respondents, Industrial National Bank and Kathy Lawson, Assistant

Petition supported by appropriate affidavit(s) as well as any motions the respondents desire to make. All motions and issues raised by the respondents will be considered upon the return date of this Order. Only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) will be considered at the return of this Order, and any uncontested allegations in the Petition will be considered as admitted.

Dated at Providence, Rhode Island, this 3rd day of December 1980.

Raymond Pitt
Chief Judge
12/4/80

Best Copy Available

For Deposit Only
Pay To The Order Of
INDUSTRIAL NATIONAL BANK
To The Credit Of
Tivian Laboratories , Co (Tiaco
43:5629808

State of DELAWARE

Office of SECRETARY OF STATE

I, Glenn C. Kenton, Secretary of State of the State of Delaware,

do hereby certify that TILACO CHEMICALS LTD.

is duly incorporated under the laws of the State of Delaware and is in good standing and has a legal corporate existance so far as the records of this office show, as of the date below shown.

Glenn C. Kenton, Secretary of State

BY:

DATE August 6, 1981

30

In Re: Irvin S. & Sylvia J. Antelman

F

Schedule 1A

Explanation of Adjustments

3. Standard Deduction

(3

You are allowed a standard deduction of $1,[illegible] for the 1975 taxable year.

5. Exemptions

(-4,[illegible])

You are allowed a deduction of $4,[illegible] for six exemptions.

Since your income tax return for the 1975 taxable year was not filed within the time prescribed by law and you have not shown that the failure to file on time was due to reasonable cause, 25 percent of the tax is added as provided by section 6651(a) of the Internal Revenue Code.

Part of the underpayment of tax for the 1975 tax year is due to negligence or intentional disregard of rules and regulations. Consequently, the 5 percent addition to the tax is charged as provided by section 6653(a) of the Internal Revenue Code.

Best Copy Available

United Parcel Service

PICKUP RECORD

55471538

32

Best Copy Available

SHIPPER TRACER

United Parcel Service

1 11 76

0114022

471 1611

4 14 76 55471538

021221

TIVIAN LAB

130 SILVER [illegible]

PROVIDENCE RI 02904

[illegible]

NO ATLANTIC BOSTON ANDOVER MA 01810

100 1/1

[illegible]

PROOF OF DELIVERY OR RETURN

1 4/ 15/ 76

Ed Bozak

Best Copy Available

Form 2039 A
(Rev. 3-77)

Summons

In the matter of the liability of
Tivian Laboratories Incorporated
333 Silver Spring Street
Providence, RI 02904

Internal Revenue District ... Providence

Periods ... 1977, 1978, 1979

The Commissioner of Internal Revenue

To ... Edward J. Correia
United Parcel Service
South New England District

At ... 90 Locust Street
Hartford, CT 06114

You are hereby summoned and required to appear before Michael DeSotelde, Revenue Agent an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

For the years 1977, 1978, and 1979

All records relative to financial transactions between United Parcel Service and Tivian Laboratories Inc., account number 021221, including but not limited to the following:

Shipped to Tivian: Date of delivery, from whom shipped, address, description of goods and cost - name of driver

Shipped from Tivian: Date of pick-up, to whom shipped, address, description of goods and cost - name of driver

Business address and telephone number of Internal Revenue Service officer named above:

333 Centerville Road, Route 117, Warwick, RI 02886 Tel. 737-7337

Place and time for appearance:

at 333 Centerville Road, Route 117, Warwick, RI 02886

on the 10th day of June 1980 at 10:00 o'clock A M

Issued under authority of the Internal Revenue Code

this 15th day of May 1980

Michael DeSotelde
Signature of Issuing Officer

Revenue Agent
Title

David L. Tuveson
Signature of Approving Officer
(if applicable)

Group Manager - 65
Title

Part A—To be given to person summoned

Form 2039-A (Rev. 3-77)

Best Copy Available

J

AFFIDAVIT

I, Bernard Labush, having an address of 67 Jefferson Blvd, Warwick, RI, hereby affirm that on July 2, 1981, I was visited by two IRS Agents who identified themselves as Michael DeCataldo and Richard Durant. These agents showed me the Financial Statements that they maintained they had obtained from the Industrial National Bank and requested my work papers for TILACO CHEMICALS LIMITED for the years 1977-1980 which I used in my accounting and the entire file I had on that company, including papers considered proprietary by Marvin S. Antelman. Since I was under the opinion that they already had all the financial information for those years, I allowed them to photocopy all my papers including the financial statements for 1980 plus the 1977-1980 inventories, which I did not know they had not obtained.

They also asked me if I knew of any fraud concerning TILACO and its dealings. I told them that in the four years I have been the accountant for TILACO, I have found nothing out of order in the receivables, payables, checks issued, purchases and journal entries which I have audited.

SIGNED: Bernard Labush

Bernard Labush

DATE: Sept. 3 1981

WITNESS: Sheryl E Labush

WITNESS: David C Gumbo

I, Richard K. Foster, Esq., being duly sworn and under oath do hereby make this AFFIDAVIT and say that:

1. I am an attorney duly licensed in all Courts within the State of Rhode Island and before the Federal District Court for the State of Rhode Island.

2. On December 29, 1981, I was present in Federal District Court before Honorable Judge Raymond Pettine in reference to the matter of United States of America et al vs Industrial National Bank et al (80-0595).

3. At the call of the calendar for that day above mentioned, and before Judge Pettine, I was sitting in the audience of the Court as a spectator to the proceedings that were going to commence in the above named matter.

4. I was not present to represent either Tivian Laboratories, Inc. nor to represent Tilaco Chemicals Ltd.

5. Prior to the December 29, 1981 hearing on this matter, I had been the attorney of record for Tivian Laboratories, Inc. but my position had expired when the corporation ceased to exist sometime prior to the above hearing.

6. Therefore, I could not represent the Tivian Laboratories, Inc. corporation in this matter.

7. Furthermore, when asked by Judge Pettine if I represented Tivian Laboratories, Inc. I informed the Court that I did not represent them in this matter. (See transcript - copy enclosed).

8. Furthermore, at no time did I represent Tilaco Chemicals Ltd. in the Court hearing nor did I enter an appearance in this matter as required by the Rules of the Court.

9. My only representation of Tilaco Chemicals Ltd. was when I was retained by the President of Tilaco Chemicals Ltd. to send a letter to Ms. Kathy Lawson of the Industrial National Bank requesting that she not comply with the previously issued Internal Revenue Service summons. I was not retained by the corporation to represent them at any court action or any further other than the request to Ms. Lawson.

10. At this present time, I do not represent Tilaco Chemicals Ltd. nor do I represent Tivian Laboratories, Inc.

11. Should the Court require any further information in reference to this hearing, I shall be more than happy to provide same at the Court's convenience.

This AFFIDAVIT submitted and prepared under oath this 4th day of September, 1981 in Lincoln, Rhode Island.

Richard K. Foster

Richard K. Foster

STATE OF RHODE ISLAND
PROVIDENCE, SC.

Subscribed to and sworn to before me this 4th day of September, 1981 by Richard K. Foster, known to personally by me, in Lincoln, Rhode Island.

Beatrice Belisle

Notary Public
My commission expires on
June 30, 1985

REOPENING MEMORANDUM

REQUEST FOR:

☒ APPROVAL TO REOPEN A CLOSED EXAMINED CASE

☐ ISSUANCE OF LETTER 950, NOTICE OF DISALLOWANCE

DISTRICT CASE NO. 05

TAXPAYER'S NAME AND ADDRESS OR LATEST KNOWN ADDRESS (if deceased)

MARVIN S & SYLVIA ANTZ-[illegible]
5 PROSPECT AVENUE
[illegible], MA. 02160

SECTION A - CLEARANCE RECORD

TO	(Number, Name or Initials of Person Receiving Document)	DECISION	SIGNATURE	SYMBOLS	DATE CLEARED	INITIALS OF PERSON MAKING CLEARANCE
1	GROUP MANAGER	Approve	[illegible]	[illegible]	12-[illegible]	
2	CHIEF, [illegible]	Approved	[illegible]	EX: R	12-26-[illegible]	
3	CHIEF, EXAMINATION Division	Agree	[illegible]	[illegible]	12-[illegible]	
4	DISTRICT DIRECTOR	✓	[illegible]		[illegible]	
	ARC (EXAMINATION) OR DIRECTOR, DIO					
	[illegible]					

SECTION B - [illegible]

1 REASON FOR REQUEST (Check one or more applicable block)

☐ A. EVIDENCE OF FRAUD, MALFEASANCE, COLLUSION, CONCEAL-MENT OR MISREPRESENTATION OF MATERIAL FACT

☐ B. SUBSTANTIAL ERROR

☒ C. REVIEW REQUIRED BY [illegible] OR OTHER REVIEWING OFFICIAL, CRITICISM, LONG RANGE PROGRAM, OR PUBLIC INTEREST

2. FACTS

	PERIOD	YEAR	AMOUNT	YEAR
A. TAX RETURN	1040	7612	n/a	n/a
B. EXPIRATION DATE	04-15-80			
C. METHOD OF PREVIOUS EXAMINATION	[illegible]			
D. TAX SHOWN ON RETURN OR AS PREVIOUSLY ADJUSTED	$618.13			
E. ESTIMATED ADDITIONAL TAX	SEE ATTACHED			

3. NARRATIVE JUSTIFICATION (Form 7249)

SIGNATURE & TITLE	TITLE	ORGANIZATIONAL SYMBOLS	DATE
[illegible]	REVENUE AGENT	[illegible] 1104	12-07-78

SECTION C - RESULTS (Complete only if use A requested)

3 DATE OF NOTICE			YEAR	AMOUNT	YEAR	AMOUNT
		A. ADDITIONAL TAX				
		B. OVER ASSESSMENT				

INSTRUCTIONS

REQUEST BASIS - Check the [illegible] block if response does not require additional inspection of the taxpayer's books of account or [illegible] if such additional inspection is required.

SECTION A - Insert the words "[illegible]" if clearance is not required, i.e., Chief, Audit Division, in district offices with divisions. All individuals signing or disapproving the request shall sign their names, insert the organizational symbols, and in the block entitled "Decision" write the word "approved" or "disapproved." Only Part I of [illegible] need be used to submit, other parts may be ignored.

SECTION B - For the taxpayer, use the following Internal Revenue Code (IRC) Section 1 (as in Conference 1 case 1976) may be used for purposes. See IRM 4563 for details concerning [illegible] examination and disapproval actions.

SECTION C - Indicate whether the change is agreed or disagreed to by inserting "A" or "D" in the appropriate column.

Form 4605 (Rev. 7-76) 37 DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

PART I

Best Copy Available

	EXPLANATION OF ITEMS	
		1
NAME OF TAXPAYER MARVIN S & SYLVIA ANTELMAN		7612

2.c. The method of previous audit was a change made by the Andover Service Center referred to the Collection DIVISION for follow-up and closing. Report form 1902X was issued to the taxpayer.

2.d. There is no estimate of additional tax due(See narrative justification)

3. NARRATIVE JUSTIFICATION

This request for reopening is made because of audit of related corporation, Tivian Laboratories. The taxpayer is involved in the laetrile movement and has failed to cooperate in substantiating items on the corporate return that affect his personal 1040.

The agent is requesting this reopening because it is felt that the failure to reopen this related case would result in establishing a precedent that would seriously hamper subsequent attempts by the Service to take corrective action.

Best Copy Available

In the Supreme Court

of the

United States

October Term 1982

No.

MARVIN S. ANTELMAN,	:
Petitioner	:
vs.	:
MICHAEL DECATALDO,	
Revenue Agent	:
UNITED STATES OF AMERICA and INDUSTRIAL NATIONAL BANK, and KATHY LAWSON,	
Respondents	:

PETITIONER'S

APPENDIX

TABLE OF CONTENTS

ITEM	DATE	PAGE
Petition to Enforce Summons	11/19/80	1
Order to Show Cause	12/ 3/80	10
Transcript Proceedings	12/29/80	12
Order	1/ 5/81	23
Motion to Intervene	4/16/81	25
Interrogatories	4/16/81	34
Plaintiff's Objection to Intervention	5/18/81	37
Memorandum of Law on Above	5/18/81	38
Intervenor's Motion to Compel Discovery	5/27/81	43
Memorandum of Law on Above	5/27/81	44
Petitioner's Objection to Discovery Motion	6/ 2/81	46
Intervenor's Notice of Copyright	6/ 3/81	47
Memorandum of Law on Above	6/ 3/81	48
Intervenor's Motion to Vacate Orders	6/24/81	54
Petitioner's Objection to Above	6/30/81	62
Intervenor's Statement of Facts	7/21/81	69

ITEM	DATE	PAGE
Motion for Stay of Proceedings	7/21/81	78
Notice of Appeal	7/24/81	79
Docket Entries		80
Title 26 USC Sec. 7609		83

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA, and MICHAEL DE CATALDO, Revenue Agent, Petitioners vs. INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager Respondents	80-0595 CIVIL ACTION NO.

PETITION TO ENFORCE
INTERNAL REVENUE SERVICE SUMMONS

The United States of America and Michael DeCataldo, Revenue Agent of the Internal Revenue Service, by their attorneys, Paul F. Murray, United States Attorney for the District of Rhode Island, and Seymour Posner, Assistant United States Attorney, aver to this Court as follows:

I.

This is a proceeding brought pursuant to the provisions of Sections 7402(b) and 7603(a) of Title 26, U.S.C., to judicially enforce an Internal Revenue Service Summons.

II.

The Petitioner, Michael DeCataldo, is a Revenue Agent of the Internal Revenue Service employed in the Examination Section of the Office of the District Director of the Internal Revenue Service in Providence, Rhode Island, and is authorized to issue an Internal Revenue Service Summons pursuant to the authority contained in Section 7602 of Title 26, U.S.C, Treasury Regulations Section 301.7602-1, 26 C.F.R., Section 7602-1, and I.R.S. Delegation Order No. 4 (Rev. 5, July 11, 1978), 43 Fed. Reg. 30005 (1978).

III.

The respondents, Industrial National Bank and Kathy Lawson,

Rhode Island, within the jurisdiction of this Court.

IV.

Michael DeCataldo, Revenue Agent, is conducting an investigation into the tax liability of Tivian Laboratories, Incorporated for the years 1977, 1978, and 1979 as is set forth in the Affidavit of said Michael DeCataldo, attached hereto and incorporated herein by reference as Exhibit 1.

V.

As of the date of this Petition, the Internal Revenue Service has not abandoned its pursuit of possible additional civil tax determination and collection in this case for the years under investigation.

VI.

The Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, are in possession and control of documents concerning the above-described investigation.

VII.

On September 11, 1980, an Internal Revenue Service Summons was issued by Michael DeCataldo, Revenue Agent, directing the respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, to appear before said Revenue Agent on October 6, 1980, at 10:00 a.m. at 333 Centerville Road, Rte. 117, Warwick, Rhode Island, and produce for examination the books, papers, records, or other data described in the Summons.

The Summons is attached hereto and incorporated herein by reference as Exhibit 2.

VIII.

On September 11, 1980, Michael DeCataldo, Revenue Agent, served a copy of the Summons, Exhibit 2 herein, on respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, by personally handing Kathy Lawson a copy of the Summons described in Paragraph VII above.

IX.

On October 6, 1980, respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, failed to appear because they received notice not to comply in accordance with Section 7609(b)(2), Title 26, U.S.C. The respondents' refusal to comply with the Summons continues to date, as is set forth in the Affidavit of Michael DeCataldo, attached hereto as Exhibit 1.

X.

The books, papers, records, or other data sought by the Summons are not already in the possession of the Internal Revenue Service.

XI.

All administrative steps required by the Internal Revenue Code for the issuance of a summons have been taken.

XII.

It is necessary to examine the books, papers, records, or other data sought by the Summons in order to properly investigate and collect the federal tax liability of Tivian Laboratories, Incorporated for the years 1977, 1978, and 1979, as is evidenced by the Affidavit of the petitioner, Michael DeCataldo, Revenue Agent, attached hereto as Exhibit 1.

WHEREFORE, the Petitioners respectfully pray:

1. That this Court enter an Order directing the respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, to show cause, if any, why they should not comply with and obey the aforementioned Summons and each and every requirement thereof.

2. That the Court enter an Order directing the respondents, to obey the aforementioned Summons and each and every requirement thereof by ordering the production of books, papers,

of the Summons before Micahel DeCataldo, Revenue Agent, or any other proper officer or employee of the Internal Revenue Service at such time and place as may be fixed by said Michael DeCataldo or any other proper officer of the Internal Revenue Service.

3. That the United States recover its costs in maintaining this action.

4. That the Court grant such other and further relief as is just and proper.

UNITED STATES OF AMERICA and
MICHAEL DE CATALDO, Revenue
Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney

SEYMOUR POSNER
Assistant U.S. Attorney

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent, Petitioners	
vs.	CIVIL ACTION NO. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	

AFFIDAVIT

Michael DeCataldo, a petitioner herein, being duly sworn under oath, states:

1. I am a duly commissioned Revenue Agent employed in the Examination Section of the Office of the District Director of Internal Revenue at Providence, Rhode Island.

2. In my capacity as a Revenue Agent, I am conducting investigations into the tax liabilities of Tivian Laboratories Incorporated for the years 1977, 1978, and 1979.

3. The purposes of the investigation are to verify the correctness of the taxpayer's federal income tax returns and to determine the correct tax liabilities for the years under investigation.

4. As of the date of this Affidavit, the Internal Revenue Service has not abandoned its pursuit of possible additional civil tax determination and collection in this case for the years under investigation.

5. The Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, are in possession and control of documents concerning the above-described matter.

"EXHIBIT 1"

6. In furtherance of the above investigation and in accordance with Section 7602, Title 26, U.S.C., I issued on September 11, 1980, an Administrative Summons, Internal Revenue Service Form 2039 (Rev. 11-79), to Industrial National Bank and Kathy Lawson, Assistant Manager, directing them to appear before me on October 6, 1980, at 10:00 a.m. to produce for examination the books, papers, records, or other data as described in said Summons.

The Summons is attached to the Petition as Exhibit 2.

7. On September 11, 1980, I served notice of the Summons on Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, by personally handing Kathy Lawson a copy of the Summons described in paragraph 6 above.

8. On October 6, 1980, the respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, failed to appear because they received notice not to comply in accordance with Section 7609(b)(2), Title 26 U.S.C. The respondents' refusal to comply with the Summons continues to the date of this Affidavit.

9. The books, papers, records, or other data sought by the Summons are not already in the possession of the Internal Revenue Service.

10. All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken.

11. It is necessary to examine the books, papers, records, or other data sought by the Summons in order to properly investigate and collect the federal tax liabilities of Tivian Laboratories, Incorporated for the years 1977, 1978, and 1979.

Executed this 19th day of November, 1980.

MICHAEL DE CATALDO
Revenue Agent

Subscribed and sworn to before me at Providence, Rhode Island, this 9th day of November, 1980.

Robert L. Gemmell
Notary Public

Form 2039
(Rev. 3-77)

Summons

In the matter of the tax liability of
Tivian Laboratories Incorporated
333 Silver Spring Street
Providence, RI 02904

Internal Revenue District of Providence

Periods 1977, 1978, 1979

The Commissioner of Internal Revenue

To Kathy Lawson
Industrial National Bank
111 Westminster Street
At Providence, RI 02903

You are hereby summoned and required to appear before Michael DeCristofaro, Revenue Agent, an officer of the Internal Revenue Service, to give testimony relating to the tax liability or the collection of the tax liability of the person identified above for the periods shown and to bring with you and produce for examination the following books, records, papers, and other data:

For the years 1977, 1978, 1979

All records relative to financial transactions in the name of Tivian Laboratories Inc., Tivian Laboratories Co d/b/a Tilaco Chemicals LTD including but not limited to the following:

Savings accounts and certificates of deposits: Opened or closed, including deposit and withdrawal slips, transcripts of accounts, checks deposited and checks withdrawn.

Checking account records: Opened or closed, including bank statements, deposit slips, checks deposited, cancelled checks, and explanation of all credit and credit

Business address and telephone number of Internal Revenue Service officer named above: Cont.

333 Canterville Road, Route 117, Warwick, RI 02886 Tel. 737-7339

Place and time for appearance:

at 333 Canterville Road, Route 117, Warwick, RI 02886

on the 24th day of October 19 79 at 10:00 o'clock A M.

Issued under authority of the Internal Revenue Code

this 21st day of September 19 79

[signature] Revenue Agent
Signature of Issuing Officer Title

[signature] Group Manager
Signature of Approving Officer Title
(if applicable)

Original to be retained by IRS

Form 2039 (Rev. 3-77)

"EXHIBIT 2"

For the years 1977, 1978, 1979

memos including but not limited to accounts numbered 43-3377447 and 43-5829309

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent,

Petitioners

vs.

INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,

Respondents

80-0595

CIVIL ACTION NO.

ORDER TO SHOW CAUSE

Upon the Petition, the Exhibits attached thereto, the Affidavit of Michael DeCataldo, Revenue Agent of the Internal Revenue Service, and upon the Motion of Paul F. Murray, United States Attorney for the District of Rhode Island, and Seymour Posner, Assistant U.S. Attorney, it is

ORDERED, that Respondents, Industrial National Bank and Kathy Lawson, Assistant Manager, appear before the United States District Court for the District of Rhode Island, presided over by the undersigned in his courtroom in the U.S. Courthouse, in Room 309, Providence, Rhode Island, on the 29th day of December, 1980, at 9:30 a.m. to show cause why they should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11, 1980. It is further

ORDERED, that a copy of the Order together with a Petition and Exhibits thereto be personally served upon respondents Industrial National Bank and Kathy Lawson, Assistant Manager, on or before Dec. 10, 1980. It is further

ORDERED, that within 10 days of service of a copy of this Order and the Petition and Exhibits thereto, the respondents, Industrial National Bank and Kathy Lawson, Assistant

Manager, shall file and serve a written response to the Petition supported by appropriate affidavit(s) as well as any motions the respondents desire to make. All motions and issues raised by the respondents will be considered upon the return date of this Order. Only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) will be considered at the return of this Order, and any uncontested allegations in the Petition will be considered as admitted.

Dated at Providence, Rhode Island, this 3rd day of December 1980.

Raymond J. Petti
Chief Judge
12/3/80

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DECATALDO, Revenue Agent,	)	
Petitioners	)	
vs.	)	CIVIL ACTION NO. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,	)	
Respondents	)	

TRANSCRIPT OF PROCEEDINGS IN ABOVE-CAPTIONED CASE ON MONDAY, DECEMBER 29, 1980 BEFORE CHIEF JUDGE RAYMOND J. PETTINE

APPEARANCES:

SEYMOUR POSNER
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF RHODE ISLAND .....FOR THE UNITED STATES

ANDREW J. MELECHINSKY, JR. .....PRO SE

MONDAY, DECEMBER 29, 1980

THE COURT: We have a show-cause order here this morning.

MR. POSNER: I would indicate to your Honor this is a petition for enforcement of an Internal Revenue Service summons directed against the respondent Industrial National Bank for its records involving a taxpayer corporation, Tivian Laboratories, Inc.

THE COURT: Is anyone here from Industrial National Bank?

MR. POSNER: Industrial has responded, your Honor, and their answer should be on file to the effect that it will comply with whatever order the Court enters in this matter.

THE COURT: Well, it states here, let me read this so there isn't any question.

(Pause)

THE COURT: Is anyone here from Tivian Laboratories?

MR. MELECHINSKY: My name is Andrew Melechinsky. I am President of Tivian Laboratories, Inc., and I filed a writ with the clerk and sent a copy to Mr. Posner and Mr. Murray and to other persons involved, including the Industrial National Bank. I think I should read it before the Court so that it will be a part of the

record.

THE COURT: Well, just a moment. Is there a writ in this record here? Do you see anything in that record?

MR. MELECHINSKY: It was mailed on December 23rd.

THE CLERK: I don't.

THE COURT: There is nothing in the record in the files of this court.

MR. MELECHINSKY: Well, I have copies, your Honor, which will serve for now.

MR. POSNER: May I see it?

(Document handed to Mr. Posner)

MR. POSNER: Your Honor, this is a corporate taxpayer. I would object to any appearance by Mr. Melechinsky on behalf of the corporation. He is not an attorney, and he cannot represent the corporation.

MR. MELECHINSKY: I think Mr. Posner should be thrown out of the courtroom, he's breaking the law by saying that I cannot represent my corporation. I have an absolute right under the Constitution to do so. No person shall be deprived of liberty, that's the law.

THE COURT: I think we have traveled this ground once before, we went all the way up to the First Circuit Court of Appeals on this ground.

MR. POSNER: Well, not quite, your Honor. I think it has been quite definitely raised by the First Circuit Court, that you are correct, but I would also indicate that the corporation's attorney is present in the courtroom, Mr. Foster.

THE COURT: Mr. Foster.

MR. FOSTER: Yes, your Honor.

THE COURT: Do you represent this corporate entity, Mr. Foster?

MR. FOSTER: In this matter I do not, your Honor, I have in the past. Mr. Melechinsky is a representative of the corporation.

MR. POSNER: Well, are you the receiver, according to the Secretary of State's Office, for service of process for this company?

MR. FOSTER: To my understanding, your Honor, the corporation no longer exists, so that my position as attorney for the corporation has ceased to exist, also.

THE COURT: Well, conceding that you are correct, nevertheless, if you want to place anything on the record, Mr. Melechinsky, you may do so.

MR. MELECHINSKY: Yes, I do.

THE COURT: Well, get to that microphone and place it on the record.

MR. MELECHINSKY: In the matter of the United

States of America and Michael De Cataldo vs. Industrial National Bank, this is a VICTIM RESPONDENT'S SPECIAL APPEARANCE AND RESPONSE TO ORDER TO SHOW CAUSE. The above-entitled action is not properly before this court because a complaint as required by Rule 3, Federal Rules of Civil Procedure has never been filed. A summons under the seal of the court as required by Rule 4, Federal Rules of Civil Procedure, was never issued by the clerk. Process was not served by a U.S. Marshal or other person "not a party" as required by Rules 4 and 45, Federal Rules of Civil Procedure. There is no victim (corpus delecti) or damaged party. The victim of this witch hunt, Tivian Laboratories, Inc., has not been charged with doing harm to person or property. The United States cannot be expected to impartially process a case in which the United States is a Petitioner or Plaintiff, as in this action. 26 USC 7602(1) does not authorize the issuance of an I.R.S. summons to persons or agencies who have not volunteered to be subject to the jurisdiction of the Internal Revenue Service. Tivian Laboratories, Inc., has publicly pronounced its policy of maintaining a non-volunteer status with regard to the I.R.S. The INDUSTRIAL NATIONAL BANK and TIVIAN LABORATORIES, INC. are not bound by Treasury Regulations or I.R.S. Delegation Orders. TIVIAN LABORATORIES, INC. has not

waived any of its rights under the U. S. Constitution. The INDUSTRIAL NATIONAL BANK cannot lawfully waive its fiduciary responsibility to invoke the Constitional rights which protect the privacy of TIVIAN LABORATORIES, INC. There has not been a probable cause finding by a jury. Therefore this court does not have jurisdiction in this matter. There is absolutely no basis in law for this Civil Action; this action is in fact fraudulent. The Federal Government, over the years, has unlawfully assumed that it has the right to sue individuals and corporations Civilly. There is no basis in law for this assumption. As stated in Black's Law Dictionary; "Civil Action. Action brought to enforce, redress, or protect private rights." The United States of America does not have any private rights. By its very nature Government is public, not private. Private rights are those rights belonging to an individual. Revenue Agent MICHAEL DeCATALDO and Attorneys PAUL F. MURRAY and SEYMOUR POSNER, acting in their capacities with agencies of government, are public servants, and as such have no private rights which could be injured. They are acting on behalf of the government; accordingly, since the Petitioners do not have any private rights to injure, they cannot lawfully be heard to complain in this Court or any other court about injury to their private rights.

The government is attempting to force TIVIAN LABORATORIES, INC., an innocent party to testify against itself, by indirection. In contrast, a criminal is not forced to testify against himself. As a matter of fact, the criminal must be told of his right to remain silent, or else he is set free. Civil suits by government deny this basic right and others. For all paractical purposes civil suits force the individual (or private agency) to prove his innocence, whereas the criminal is innocent until proven guilty. This is a wholesale violation of basic organic rights.

These fraudulane "Civil Suits" circumvent the constitutional safeguards of Articles I, IV, V, VI, VII, VIII, IX and X of the Bill or Rights as well as Article XIII.

Neither the United States of American, nor any of its agencies have private rights to injure, nor can they invent such private rights. Therefore, they cannot be heard to complain via Civil Actions.

Though this is (presumably) a civil case, there can be no doubt that any information sought by the Petitioners can and will be used against TIVIAN LABORATORIES, INC., in any criminal action considered by the Petitioners to be justified by any evidence gained through this fishing expedition.

If there is no criminal evidence to be found, there is no legal basis for requiring the Respondents to submit to the threatened searches of their documents and records. Under Amendment IV of the Constitution, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." (Under Amendment IX the Respondents are the ones who determine what is unreasonable with regard to the documents and records of TIVIAN LABORATORIES, INC.). All documents or records in the possession of the Respondents are private except under probable cause of criminal activity. The use of a "Summons" by the Internal Revenue Service is an admission by that agency that it is conducting a criminal investigation. In that case Amendment V applies.

There is no description in the "Summons" of any documents or records which allegedly were used, or will be used in the commission of a crime. Such a description is required by Amendment IV, "no warrants (or Summons) shall issue but upon probable cause ...describing the ... things to be seized." The Respondents do not have in their possession any documents, books or records bearing the words, "for Internal Revenue Service investigation."

TIVIAN LABORATORIES, INC., reaffirms to Respondent INDUSTRIAL NATIONAL BANK that it is prhohibited from

giving any information whatsoever to any person or agency of the Federal Government without the specific written permission of said TIVIAN LABORATORIES, INC. Further, said Respondents are hereby placed on notice that said TIVIAN will forever hold it liable for any damages resulting from its failure to heed the demands of said TIVIAN for privacy of papers, records, and so forth.

The law requires that unless the target of this action volunteers, the I.R.S. cannot have jurisdiction. The Victim Respondent has not volunteered.

There is in fact no lawful suit involved here. The U.S. Attorney is on notice that he is lawlessly misuing taxpayers money by lawlessly pursuing this so-called Civil Suit; there is no lawful complaint because the Petitioner has no private rights to enforce, redress or protect.

This Court lacks jurisdiction to entertain this so-called Civil Suit, by virtue of the fact that the Federal Government cannot proceed in Civil Suits it institutes.

The Federal Government is not possessed of Private rights.

The Respondent INDUSTRIAL NATIONAL BANK cannot lawfully comply with the Show Cause Order, nor can it lawfully be compelled to produce the information, documents, records, and so forth, enumerated in the unlawful Summons.

The Victim Respondent TIVIAN LABORATORIES, INC., has submitted this writ in order to defend its rights without acknowledging or submitting to the jurisdiction of the Court until such jurisdiction is constitutionally justified.

The Victim Respondent chooses not to participate voluntarily in any action in equity. This matter cannot proceed except as an action at law.

The undersigned certifies under penalty of perjury that the above statements are true and correct to the best of his knowledge.

Your Honor, it is signed by me.

THE COURT: All right, Mr. Posner, no just cause having been shown, this order is hereby granted, and they will comply. You prepare an order for my signature.

MR. POSNER: Thank you, your Honor.

MR. MELECHINSKY: Let the record show, your Honor, that you have broken the law. There was more than enough just cause shown.

THE COURT: Okay. Let's proceed with the next case.

(Proceedings in the above-captioned case of United States of American and Michael DeCataldo vs. Industrial National Bank, Civil Action No. 80-0595 concluded)

C E R T I F I C A T E

I, Louis V. Spertini, official court reporter for the United States District Court for the District of Rhode Island, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; I do further certify that the foregoing transcript has been prepared by me or under my direction.

Louis V. Spertini

LOUIS V. SPERTINI, OFFICIAL COURT REPORTER

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent, Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	)	

ORDER

This cause came on to be heard before Chief Judge Raymond J. Pettine on December 29, 1980, upon the filing of a Petition to Enforce an Internal Revenue Service Summons with Exhibits attached thereto and the issuance by this Court on December 3, 1980 of its Order to Show Cause why the Respondents should not be compelled to obey the Internal Revenue Service Summons served upon them on September 11, 1980.

Andrew J. Melechinsky, President of Tivian Laboratories, Inc., the corporate taxpayer under investigation, whose records are being sought from the Respondents herein, appeared at the December 29, 1980 hearing and read into the record a Special Appearance and Response to the Order to Show Cause, which was filed and made part of the record in this case.

Upon consideration of the pleadings and exhibits herein, it is

O R D E R E D

that the Respondents shall comply with and obey forthwith the Summons, and each and every requirement thereof served upon them on September 11, 1980 and shall produce the books, papers,

records or other data required and called for by the terms of said Summons before Michael DeCataldo, Revenue Agent, or any other proper officer or employee of the Internal Revenue Service on January 15, 1981, at 10:00 a.m. at the Internal Revenue Service office, 130 Broadway, Providence, Rhode Island.

By Order,

Linda Coppola
Deputy Clerk

ENTER:

Raymond J. Pettine
RAYMOND J. PETTINE
Chief Judge
United States District Court

12/30/80

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,

Petitioners

v.

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,

Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself
and TILACO CHEMICALS LTD.

RECEIVED
APR 16 1981
C.A. 80-0595 CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

MOTION TO INTERVENE
AND FOR WRIT OF INJUNCTION

I. JURISDICTION

Jurisdiction is conferred upon this Court by Article III, Section 2, of the United States Constitution, Title 28 United States Code, Sections 1331, 1340, 1343; Title 26 United States Code, Section 7214; Title 18 United States Code, Sections 241 and 242, 1622 and 1623; Title 42 United States Code, Sections 1983, 1985 and 1986; 5 United States Code Section 552; Title 26 United States Code, Sections 6851 and 7609.

II. STATEMENT OF THE MOTIONS

1. Taxpayer moves this Court to issue its order naming him Intervenor in this case, pursuant to Rule 24(a) FRCivP and also 26 USC Section 7609 (b) (1) which provides, as a matter of law that a taxpayer or customer has the right to be named intervenor in IRS summons enforcements against his third party financial institutions.

For cause, taxpayer-customer has significant protectable interests under the law, not previously litigated by the Court.

2. Intervenor, Marvin S. Antelman, moves this Court for an Order, directed to the Petitioners and more specifically against Michael DeCataldo and the Commissioner of the IRS, to show cause on a date certain why an injunction should not issue out of this Court and in this cause permanently restraining the Petitioners and all persons working in concert with them from pursuing their unlawful conduct with reference to the rights and property of the Intervenor, and to show cause why a declaratory judgment should not issue confirming the unconstitutionality of the Internal Revenue Code Section 6331 (b).

III. FACTS

1. Intervenor Marvin S. Antelman is a resident of Middlesex County, Massachusetts.

2. Intervenor was formerly President of Tivian Laboratories Incorporated, a Rhode Island Corporation now located in Enfield, Connecticut, a position from which he resigned in 1976. He is no longer affiliated with said Corporation. Tivian Laboratories Incorporated is different and separate from Tilaco Chemicals Ltd.

3. Intervenor is President of Tilaco Chemicals Limited, a Delaware Corporation which name stands for a dba of Tivian Laboratories Corporation.

4. Intervenor's capacity with respect to this Motion in addition to his personal capacity is that of President of Tilaco Chemicals Limited and that of intervenor for the Corporation as a stockholder.

5. Petitioners are presently engaged in surveiling the bank records of the Delaware Corporation Tilaco Chemicals Limited under the pretext that this company is part of the Rhode Island Tivian Laboratories Incorporated which it is not.

6. Said records under surveillance is a checking account of Tilaco with Industrial National Bank (IN Bank) of Rhode Island, Account Number 43-5829809.

7. To date the IRS has received copies of Tilaco's monthly bank account statements, deposit slips, and checks issued with respect to said account under the authority of an IRS summons against the other company, Tivian Laboratories Incorporated of RI, which was supported by the US District Court for the District of Rhode Island against Tivian Laboratories Incorporated, case # 80-0595. Tilaco did not defend itself in said action through inadvertance.

8. At the present time, the IRS is requesting confidential and proprietary financial statements of Tilaco Chemicals Limited from IN Bank and data in conjunction with said summons including private information and personal papers of Intervenor consigned to IN Bank, in bank's fiduciary capacity; all under the alleged authority of said summons, which does not specify financial statements or 4th Amendment protected documents.

9. Counsel for IN Bank has informed Tilaco and Intervenor of the IRS' impending request. Said Counsel, the firm Hinckley Allen of Providence, RI has granted a stay on turning over said records to the IRS, in order to grant Intervenor time to file for a temporary restraining order.

10. Intervenor is a plaintiff against the IRS and Michael DeCataldo in the US District Court of Massachusetts, C.A. 79-2004 S and in the District Court of Rhode Island C.A. 80-0255 against the United States in a related IRS matter.

IV. IRREPERABLE HARM

Intervenor believes that the Petitioners are engaging in illegal, unlawful practices and acts injurious to his human civil and constitutional rights unless Petitioners are enjoined by this Court from engaging in further illegal activities and IN Bank and its counsel from complying with the IRS summons.

27

V. CAUSES OF ACTION

Intervenor Marvin S. Antelman claims Petitioners have: Conspired to deprive him and Tilaco Chemicals Limited of civil and constitutional rights and denial of due process of law; engaged in multiple subornation to perjury; made false declarations to a United States Court; unlawfully interferred with business; invaded his and the corporation's privacy; and have trespassed, as set forth herein:

1. Petitioners have conspired to seize private bank records and Intervenor's papers and records held by Respondent IN Bank in their fiduciary capacity without due process of law and trial by jury.

2. The Petitioners have presented IN Bank procket summons called IRS 2039 Summons Form, which are modelled after the infamous "Writs of Assistance" pocket summons used by the British custom house officials 200 years ago which led to Lechmere Case of 1761 to test the validity of "Writs of Assistance" which James Otis argued so eloquently against in that case that our second President John Adams said that our republic was born and grew up to manhood 15 years later, due to the eloquence of James Otis. These infamous writs used to break into homes of colonists, as IRS 2039 forms are used today, combined judicial and executive departments of government, defined by James Madison in Federalist Paper No. 47 as tyranny (i.e. the combination of executive and judicial divisions of government known as Separation of Powers).

The use of the summons made by the Petitioners is a violation of the civil and constitutional rights of the Intervenor for several reasons including the following:

a. The IRS 2039 Form used violates Amendment IV of the United States Constitution in that it fails particularly to describe the bank records sought by the Petitioners which is provileged data which would violate the civil and constitutional rights, not only of the Intervenor but of his clients as well.

b. The use of the IRS 2039A Summons of Records Forms used by Petitioners in this action constitutes a form of terrorism to collect alleged taxes even when Intervenor has shown that no tax liability existed to Petitioners.

c. The attempt to bypass Due Process of Law of trial is prima facie evidence that Petitioners were issuing a Bill of Attainder to attaint and brand the Intervenor as an outlaw without Due Process of Law and notice. Such writs are prohibited by Article I, Section 9 of the U.S. Constitution.

Amendment 4 of the United States Constitution requires that the Petitioners secure a warrant to secure private bank or realty records, but that it must "particularly describe the things to be seized". See Amendment 4 of the United States Constitution, but which also requires a warrant from a court of competent jurisdiction be issued supported by oath or affirmation.

Petitioners failed to secure court ordered warrants supported by an oath or affirmation from a court of competent jurisdiction.

3. Petitioners have denied DUE PROCESS OF LAW to the Intervenor. Inasmuch as all United States citizens are guaranteed equal rights in Article IV, Section 2 and in Amendment XIV of the United States Constitution, either all citizens are searched in their private papers by warrants or none of them. Petitioners discriminated individiously by denying such a warrant.

4. Petitioners have commited the serious federal criminal offense of Multiple Subornation to Perjury by continually attempting to suborn the Intervenor to make the false allegment that an irredeemable federal reserve note was substitutable for dollar ($) demanded for alleged taxes. Only an idiot, knave, or fool at this time does not admit that all backing

was removed from our currency on March 18, 1968 so that irredeemable so-called "federal" reserve notes became evidences of debt with intrinsic values of 1.5¢ each in any denomination under the federal reserve banking act of Title 12 USC 411, 412, 420 and 444. Private owners of the so-called "Federal" Reserve Bank, for example, realize 7,500% return on each 1.5¢ they take to the U.S. printing office to purchase a 100 dollar bill which they take to the U.S. Treasury to exchange for bond of the full face amount in the most incredible swindle in monetary history. With debt currency a false national debt is collected. Furthermore, Article I, Section 8 of the United States Constitution provides that Congress shall have the authority to collect taxes to pay the debts which it is not paying and so thereby Congress does not have the authority to collect taxes. Dollar is defined in US Coinage Acts 1792-1900: 412.5 grains of silver troy weight. Title 31 USC 314 requires federal reserve notes be kept at parity with the gold dollar none-tenths fine which has not been done since 1964. President Reagan has stated that debauchery of our monetary system has been destroying our nation and making currency immeasurable.

5. Petitioners have engaged in their terror tactics by bypassing the Due Process of Law and other rights of the Intervenor on the philosophy of Aron Burr, the traitor, who observed that "Whatever is boldly asserted and plausibly maintained is law". The end does not justify the means so the Plaintiffs have acted outside of the perimeters of their duties which do not include pretending that they have a "duty" to violate the civil and constitutional rights of the Intervenor. Petitioners have made a false declaration to the Court that they seek information on the checking account of Tivian Laboratories Incorporated when in reality they seek information on the unrelated parties of Intervenor and his corporation, Tilaco Chemicals Limited, which deal with IN Bank.

30

6. Petitioners have made an unlawful interference with the business of Intervenor by sending a continuous stream of papers alleging tax matters for which Intervenor is not liable, damaging his reputation in the community and borrowing ability at banks, and generally serving as a public nuisance to attempt to make the Intervenor dissipate his productive time with unnecessary and inapplicable forms, defamation of character, and general interference with business of Intervenor, especially with demands for records, although Intervenor has shown that he has no tax liability and has sent requests for instructions on how to comply with their request for tax data without waiving constitutional and civil rights which Petitioners have failed to answer, although public servants, have an obligation to serve their sovereign masters, the citizens, who support the civil service system.

7. On various occasions, the Petitioners and/or their accomplices have trespassed on the premises of the Intervenor without an appointment to interfere with his business operations and have used the United States mails to send threatening communications concerning our voluntary income tax system in the manner of a Police State. By IRS summons in obtaining Tilaco checking account records, they have trespassed on Tilaco's private transactions. Corporations have privacy as well as their clients. The Petitioners have acted under the unconstitutional provisions of the Internal Revenue Code such as 26 USC 6331 (b) which purports to permit the Secretary of Treasury to use "any means" to collect taxes which would include extrotion and murder, and we all know that such means deny Due Process of Law. The use of IRS 2039A Summons Form is a contravention of the Constitution of the United States of America in that it attempts to demand that the Intervenor surrender Fourth and Fifth Amendment and First Amendment Rights.

Respondent IN Bank need not produce any of the bank or private records of the Intervenor to Petitioners or their accomplices and, in fact, should

file suit to enjoin the Petitioners and accomplices from attempting to secure such data and demand that a Court order with a seal from a Court of competent jurisdiction, a United States District Court, be required for production of any of Intervenor's or Tilaco's records through a Probable Cause Search Warrant. Intervenor, as a United States citizen, does not have to surrender one constitutional right to enjoy another right, guaranteed by the United States Constitution.

WHEREFORE, INTERVENOR DEMANDS:

(1) For an Order to Show Cause directed to the Petitioners seeking private records of the Intervenor and his corporation Tilaco and IN Bank from whom records are sought to show cause why the Petitioners should not be permanently restrained from continuing unlawful actions or failure to protect from unlawful actions of other IRS Agents or officials in this action.

(2) For a permanent injunction and permanent Writ of Mandate or initially a Tempory Restraining Order directed to the Petitioners and all persons acting in concert with them to cease and desist in the pursuit of their unlawful course of conduct; OR, in the event the Court rules against "permanency" prayer prior to final adjudication, then,

(3) A Temporary Injunction to stay all proceedings, pertaining to the unlawful demand for production of said records without Due Process of Law.

(4) For a Declaratory Judgment finding the said Summons or other IRS document and the issuance and use of same unconstitutional; and Petitioners and all parties pertinent be enjoined from use thereof forever.

(5) For an additional judgment against Petitioners to Intervenor's original claim of October 3, 1979 in the US District Court of Mass (CA 79-20045) in the amount of $100.00 punitive damages from the Commissioner

and sentencing Petitioner DeCataldo to prison for the maximum allowed under Title 18 USC Sections 241 and 242.

(6) For such other and further relief and remedy as shall be necessary and in good conscience due Intervenor to make him whole in the eyes of the law.

Respectfully submitted,
Pro se

Marvin S. Antelman

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DeCATALDO, Revenue Agent, Petitioners v. INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents and MARVIN S. ANTELMAN, Intervenor for himself, and TILACO CHEMICALS LTD.	C.A. 80-0595

RECEIVED
APR 10 1981
OFFICE, U. S. ATTORNEY
DIST. OF R. I.

INTERROGATORIES

PURSUANT to Rule 33 of the FRCP, the following Interrogatories are propounded by Intervenor to Michael DeCataldo. The Intervenor hereby requests that you answer within thirty (30) days of service, in writing, these Interrogatories, under oath, and as otherwise provided by law:

1. Has Intervenor been classified as a member of any group?

2. Has Intervenor been classified as a "tax protestor"? If so, by whom? If so, why?

3. What authorities or manuals define a "tax protestor", or the procedures pertaining to a "tax protest return"?

4. What officials have authority to classify citizens as a "tax protestor"?

5. State the name, official's title and job description of that person or persons who initiated this investigation and the exact date the investigation was initiated.

6. Describe in detail the exact nature of the investigation against TILACO CHEMICALS LTD., the full scope thereto, the principal purpose and expected results.

7. Give the name, address, and title and job description of all persons or

parties who have been associated in this investigation, who may be associated, and who will see the reports of this investigation.

8. State fully all written and verbal instructions given to you or by you in connection with this case.

9. Has the Criminal Investigation Division of the IRS been involved in this case? If so, for how long? Is it the principal division in this case?

10. Has any recommendation been made to the Justice Department?

11. Has any decision been made as to making a recommendation to the Department of Justice? If so, when? If so, by whom?

12. State in detail the use, to the fullest extent, which the government will make of TILACO CHEMICALS' signature card, bank statements, checks, financial records and other information sought by the IRS in this case.

13. State which of these documents are needed for a civil investigation, which for criminal investigations and which for both.

14. State fully all instructions, descriptions, plans and other communications to you pertaining to Intervenor, any groups or associations which he was a member or any persons or groups classified as "tax protestors".

15. State in detail why the Freedom of Information request of the Intervenor was not completely filled.

16. Can any statement by Intervenor or any document presented by him in this proceeding be used against Intervenor in a criminal proceeding?

17. Does the IRS have the power to grant an immunity against prosecution?

18. Has the government figured or made any study on the assets of Intervenor? If so, to what extent?

19. List in detail the assets of Intervenor known to the government.

20. Does the IRS expect to collect any funds or judgments against Intervenor? If so, how?

21. State fully all instructions, descriptions, plans and other communications to you pertaining to TILACO CHEMICALS LTD.

22. Has the government figured or made any study on the assets of TILACO CHEMICALS LTD? If so, to extent?

23. List in detail the assets of TILACO CHEMICALS LTD. known to the government.

24. Does the IRS expect to collect any funds or judgments against TILACO CHEMICALS LTD.? If so, how?

25. What evidence has Petitioners uncovered to date showing TIVIAN LABORATORIES INCORPORATED and TILACO CHEMICALS LTD. to be two separate corporations?

26. If it has, why has it not terminated the investigation?

Marvin S. Antelman

MARVIN S. ANTELMAN, pro se
5 Prospect Avenue
Newton, MA 02160

DATE: APRIL 16, 1981

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent, Petitioners vs. INDUSTRIAL NATIONAL BANK and KATHY LAMSON, Assistant Manager, Respondents	C.A. No. 80-0595

PLAINTIFFS' OBJECTION TO MOTION TO INTERVENE AND FOR WRIT OF INJUNCTION

Now come the plaintiffs herein by their attorneys and object to the Motion to Intervene and For Writ of Injunction filed by Marvin S. Antelman for himself and on behalf of Tilaco Chemicals, LTD. for the reasons set forth in the accompanying Memorandum of Law.

Respectfully submitted,

UNITED STATES OF AMERICA and
MICHAEL DE CATALDO, Revenue Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney

SEYMOUR POSNER
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 1981, I served a copy of the within Objection to Motion to Intervene and for Writ of Injunction by mailing same postage prepaid to Marvin S. Antelman, Esquire, 5 Prospect Avenue, Newton, Massachusetts 02160, by mailing same postage prepaid.

37

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DE CATALDO, Revenue Agent,

Petitioners

vs.

INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,

Respondents

CA. No. 80-0395

PETITIONERS' MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO INTERVENE AND FOR WRIT OF INJUNCTION

STATEMENT OF FACTS

In the above action to enforce an Internal Revenue Service Summons, this Court, by Order entered on December 30, 1981, granted the government's Petition for Enforcement of the Internal Revenue Service Summons served on respondent Industrial National Bank on September 18, 1980.

In compliance with the December 13, 1980 Order, respondent Industrial National Bank has been supplying petitioner DeCataldo with bank records relating and pertaining to Tivian Laboratories, Inc. and Tilaco Chemicals, LTD. No appeal was taken from this Court's December 30, 1980, Order.

Over 3 1/2 months after the entry of this Court's Order, Marvin S. Antelman has filed a Motion to Intervene and for Writ of Injuction on behalf of himself and for Tilaco Chemicals, LTD., allegedly a Delaware corporation in which Antelman is allegedly a stockholder and President. No affidavit(s) accompanied the Motion to Intervene and For Writ of Injunction when it was filed by Antelman.

The Internal Revenue Service Summons in this case was issued and served upon respondent Industrial National Bank on September 11, 1980. Said Summons, "Exhibit 2" of the Petition to Enforce Internal

transactions in the name of Tivian Laboratories, Inc., Tivian Laboratories CO d/b/a Tilaco Chemicals, LTD . . . ."

Richard K. Foster, Esquire, intervened at the administrative level by letter dated September 30, 1980, in which he advised the bank that he had been retained to represent both Tivian Laboratories, Inc. and Tilaco Chemicals, LTD. in reference to the Internal Revenue Service Summons of September 11, 1980. In the same September 30, 1980 letter, Foster requested respondant Industrial National Bank not to comply with the Internal Revenue Service Summons pending a Court order from a court of competent jurisdiction. "This request is made on behalf of both of my clients in order to protect both of their interests." A copy of the September 30, 1980, letter of Richard K. Foster to Industrial National Bank is attached hereto as "Exhibit 1."

A copy of the Order to Show Cause entered by Chief Judge Pettine on December 3, 1980, together with the Petition to Enforce Internal Revenue Service Summons, with Exhibits attached thereto and the Affidavit of Revenue Agent Michael DeCataldo, was mailed to Richard Foster, Esquire, Andrew J. Malechinsky, and Tivian Laboratories, Inc. on December 8, 1980, by certified mail, return receipt requested, and was received by Richard Foster on December 9, 1980. A copy of the return receipt is attached hereto as "Exhibit 2."

At the hearing before Chief Judge Raymond J. Pettine on December 29, 1980, Andrew J. Malechinsky appeared to object to the enforcement of the Internal Revenue Service Summons. Richard K. Foster was present in the courtroom but raised no objections to the enforcement of the summons. Marvin S. Antelman did not appear, nor was he present in the courtoom for the December 29, 1980 hearing on this matter.

The taxpayer whose tax liability is being investigated in this matter is Tivian Laboratories, Inc.

ISSUE

1. Can a party identified in the description of records summonsed from a third-party recordkeeper, who is notified of the commencement of an enforcement proceeding, move to intervene after summonses are ordered enforced and after the period for appeal has expired?

2. Can a taxpayer or third-party enjoin or permanently restrain the Internal Revenue Service for issuing and enforcing a summons under the provisions of 26 U.S.C. §§7402(b) and 7604(a).

ARGUMENT

A MOTION TO INTERVENE UNDER 26 U.S.C. §7609, MADE BY A TAXPAYER OR OTHER PARTY, AFTER NOTICE, MUST BE MADE TIMELY.

Under the provisions of 26 U.S.C. §7609(a)(1), notice of the issuance of a summons to a third-party recordkeeper (e.g. a bank) requiring "the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons," must be given to any person so identified.

In any action brought in District Court under 26 U.S.C. §7604(a), to enforce an Internal Revenue Service administrative summons, (IRS Form 2039 [rev. 11-79]), "any person who is entitled to notice of a summons under Section (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under Section 7604." Title 26, U.S.C., §7609(b)(1). Such right of intervention must be exercised during the pendency of the action and/or the period during which an appeal may be taken from an order of this Court (60 days).

In this case Tilaco Chemicals, LTD., described in the body of the Internal Revenue Service Summons served on respondent Industrial National Bank, was notified of the pendancy of this action when a copy of the Order to Show Cause and Petition herein were mailed to its attorney, Richard K. Foster, by certified mail, return receipt requested. Richard Foster appeared at the hearing on December 29, 1980. The time in which to appeal this Court's Order of December 30, 1980, has expired. No appeal has been taken. Tilaco Chemicals, LTD had an opportunity to contest the enforcement of the Internal Revenue Service Summons served on the respondent bank, and could have taken an appeal from this Court's Order but failed to do so. This matter is now Res Adjudicata. Dionne vs. Ross, et als., 80-1 USTC §9240, at page 83,438 (copy attached hereto for the convenience of the Court).

DISTRICT COURT IS WITHOUT JURISDICTION TO ENJOIN OR RESTRAIN THE ENFORCEMENT OF A SUMMONS ISSUED PURSUANT TO A TAX INVESTIGATION.

The Internal Revenue Service is presently conducting an investigation into the tax liability of Tivian Laboratories, Inc. for the years 1977, 1978, and 1979. Affidavit of Michael DeCataldo "Exhibit 1" of Petition to Enforce Internal Revenue Service Summons. Injunctive relief to prevent the Internal Revenue Service from continuing to receive bank records which it would require as part of its investigation is prohibited by the Anti-injunction Act, 26 U.S.C. §7421, which states:

> ". . .no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any Court by any person, whether or not such person is the person against whom such tax was assessed."

Black Panther Party vs. Alexander, 75-1 USTC §9376 (A copy of which is attached hereto for the convenience of the Court.); Black vs. United States, 534 F.2d 526 (1976). The appropriate action to take with respect to the issuance and objection to the enforcement

of an Internal Revenue Service Summons is to challenge the validity of the summons, as outlined in Black vs. United States, supra., 527.

CONCLUSION

For the reasons previously set forth, the Motion to Intervene and for Writ of Injunction filed by Marvin S. Antelman for himself and for Tilaco Chemicals, LTD. should be denied.

Respectfully submitted,

UNITED STATES OF AMERICA and
MICHAEL DE CATALDO, Revenue Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney

Seymour Posner

SEYMOUR POSNER
Assistant U.S. Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

RECEIVED
MAY 27 1981
CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself
and TILACO CHEMICALS LTD.

C.A. 80-0595

INTERVENOR'S MOTION
TO COMPEL DISCOVERY

Now comes the Intervenor and moves pursuant to Rule 37 (a) of the FRCP that the Court compel Michael DeCataldo to answer the Interrogatories propounded by the Intervenor and served upon him on April 16, 1981 which he had 30 days to answer. As of this date, he has failed to answer them.

Respectfully submitted, pro se

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

DATE: May 27, 1981

RECEIVED

MAY 27 1981

CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

C. A. 80-0595

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself
and TILACO CHEMICALS LTD.

INTERVENOR'S MEMORANDUM
OF LAW ON MOTION
TO COMPEL DISCOVERY

1. On December 30, 1980, this Court granted the government's petition for enforcement of an IRS Summons served on Respondent, IN Bank. Respondent Industrial National Bank complied with the Court Order.

The Summons Form 2039 requested all records relative to financial transactions of Tivian Laboratories Incorporated (of Rhode Island) in the name of Tivian Laboratories Co. d/b/a/ TILACO. However, sometime in March of 1981 IN Bank informed Intervenor of what its bank officers considered a radical departure from a 2039-Summons, namely a request by Agent DeCataldo for Intervenor Antelman's privileged private financial statements. Said subject matter being the cause of Intervenor's original Motion to Intervene and for Writ of Injunction which clearly sets out why the IRS's actions are not an ordinary enforcement action. Accordingly, Intervenor's interrogatories are clearly not in the category of post hearing discovery.

2. Intervenor in said motion cited Rule 24 (a) FRCP as basis for an order naming him Intervenor in this case. As an Intervenor pursuant to Title IV of the FRCP he becomes a valid party to this action and is entitled to discovery under Rule 26 (a).

3. Intervenor's Interrogatories are crucial to this action for they seek to pierce the bureaucratic veil of the IRS and particularly the credibility of Agent DeCataldo who under oath stated in an affidavit supporting the Petition To Enforce IRS Summons of November 19, 1980; under Item 11 that:

> "It is necessary to examine the books, papers, records, or other data sought by the Summons in order to properly investigate and collect the Federal Tax liabilities to Tivian Laboratories, Incorporated for the years 1977, 1978 and 1979."

4. DeCataldo's Affidavit also stated:

> "All administrative steps required by the Internal Revenue Code for issuance of a summons have been taken."

DeCataldo's replies to the Interrogatories should set out sufficient facts for Intervenor to set forth an argument for the Court to determine whether the IRS's request fro the privileged and private papers of Intervenor Antelman and TILACO Chemicals Limited is in conformity with all of the administrative steps required under the Privacy Act covered by USC Title 12, particularly Sections 3402, 3403, 3404, 3405, 3406, 3407, 3408, and 3410.

5. The IRS to date now has in its possession all financial transaction records pertaining to TILACO Chemicals Limited, a separate and different entity than Tivian Laboratories Incorporated. They have for 1977, 1978, and 1979:

a. checking account records
b. copies of canceled checks
c. copies of deposit slips
d. miscellaneous corporate papers of TILACO.

Is it not proper for Intervenor to know how these records have served the original intent of the IRS' Summons and what progress "public servant" DeCataldo (at taxpayers' expense) has made in fulfilling his original objectives?

Would not the replies to these Interrogatories shed light as to whether Agent DeCataldo is truly engaged in an "enforcement proceedings" as opposed to criminal breaking of laws, corrupt practices, barristry, political persecution, harassment, and conspiracy to deprive Intervenor of his Civil Rights?

Respectfully submitted
pro se,

_____

Marvin S. Antelman
5 Prospect Avenue

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DECATALDO, Revenue Agent,	)	
Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,	)	
Respondents	)	

PETITIONERS' OBJECTION TO "INTERVENORS'" MOTION TO COMPEL DISCOVERY

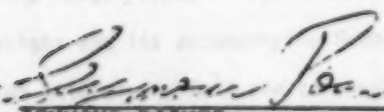
Now come the petitioners herein, by their attorneys, and object to the "Intervenors'" Motion to Compel Discovery, for the reasons set forth in the Petitioners' Memorandum of Law filed on May 18, 1981 in this Court in Opposition to Interrogatories Propounded by "Intervenors" Marvin S. Antelman and TILACO Chemicals Ltd. Said Memorandum of Law is made a part hereof and incorporated herein by reference.

Respectfully submitted,

UNITED STATES OF AMERICA and
MICAHEL DECATALDO, Revenue Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney



SEYMOUR POSNER
Assistant U.S. Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself and
TILACO CHEMICALS LTD.

C.A. 80-0595

RECEIVED
JUN 3 1981
CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLA

INTERVENOR'S NOTICE
OF COPYRIGHT

Now comes the Intervenor and serves notice on all parties that all financ records belonging to TILACO and Marvin S. Antelman in the posession of Respon which are the basis for this intervention are copyright under Common Law.

Furthermore, said documents bear the following legend:

"Copyright 1980 under Common Law by
TILACO CHEMICALS LTD. and MARVIN S. ANTELMAN

All rights reserved. No part of this document may be reproduced in any form or by any means, nor may any part of this document be distributed to anyone; nor may any of the information contained therein be imparted to anyone without the express written consent of the copyright owners."

Respectfully submitted,
pro se

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

CERTIFICATE OF SERVICE

I, Marvin S. Antelman, hereby certify that on June 3, 1981 I served the Intervenor's Notice of Copyright and its accompanying Memorandum of Law upon Seymour Posner, Assistant US Attorney by Mail and to cousel for IN Bank and Kathy Lawson all in Providence, RI.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v. C.A. 80-0595

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself and
TILACO CHEMICALS LTD.

MEMORANDUM OF LAW ON
COMMON LAW COPYRIGHT

There are two forms of copyright in the United States. Federal statute under 17 United States Code is the statutory copyright which can be altered or amended by Congress at its whim. Whereas, the Common-Law Copyright is "of first publication" (18 Am Jur 2d Copyright S.1) and is unalterable by Congress, for its roots go back to the Magna Carta.

> "The statutory copyright confers the privilege of exclusive publication during a definite period, while the Common-Law right to make the first publication is perpetual." Calig v. Inter. Ocean Newspaper Co., 215 US 182, 54 L Ed 150, 30 S. Ct. 38.

That means, quite simply, that nothing, absolutely nothing can be published or used in any manner without express permission or consent of the common-law copyright owner. And, where it has the same common ancestry as the Constitution of the United States, it is of equal power, authority and jurisdiction.

> "The proprietor of a copyright is the author or anyone to whom he transfers the whole title to his work." Mifflin v. R. H. White Co., 190 US 260, 47 L Ed 1040, 23 S. Ct. 769.

> "The basic distinction between the rights in and to literary publications as they exist at common law and as they are granted by statutory copyright is that the common law protects only a property right, while the copyright statute grants a limited monopolistic privilege." Desny v. Wilder , 46 Cal 2d 715, 299 P 2d 257.

> "When an idea is given embodiment in a tangible form, it becomes the subject of common-law property rights which are protected by the courts." 104 ALR 1357; s. 157 ALR 1436.

"It is the intellectual production of the author and not the particular form which such production takes which the copyright protects." Holmes v. Hurst, 174 US 82, 43 L Ed 904, 19 S. Ct. 606.

"...a recognized right of property in the plan, arrangement, or combination of materials in connection with a published work, even though the materials themselves may not be the subject of any exclusive rights." Callaghan v. Myers, 128 US 617, 32 L Ed 547, 9 S. Ct. 177; Bank Law Pub. Co. v. Lawyers Co-Op Pub. Co. (CA2) 168 F 386, app dsmd 225 US 386, 56 L Ed 636, 32 S. Ct. 530.

Recognition of a distinctive literary property (Common-Law Property Rights) has existed from an early day and that an author had ownership of the production of his brain equal to that of the creator of corporeal property. The Ancient Common Law recognized the right of an author to his publications and to a control of their publication (18 Am Jur 2d S. 6).

This means that anything that is published, disclosed, used in any public or private manner without express consent and permission of the owner is a violation of Common-Law Copyright and thereby actionable for damage in the Courts of the United States.

The Common-Law literary property or copyright is an absolute property right (19 ALR 949, 23 ALR 2d 262) which, like a statutory copyright, is purely incorporeal and attended with considerations different from those involved in other rights. The common-law right is one which is entirely independent of locality and belongs essentially to the owner wherever he may be and in whatever locality one or more copies of the writings may be found. It is recognized and protected by the common law wherever that system prevails (Ferris v. Frohmen, 223 US 424, 56 L Ed 492, 32 S. Ct 263) and its scope is determined according to the law of the place where it is sought to be recognized (Capitol Records Inc. v. Mercury Records Corp (CA2 NY) 221 F 2d 657) and depends upon state law for its protection. The right follows the person of the owner and is governed by the law of his domicile. It is a transferable property right which on an unconditional sale of the production passes to the purchaser, and which on the owner's death goes to his personal representative or next of kin as does other personal property.

The rights in an intellectual or artistic production are twofold--absolute ownership of the corporeal production, as with other property ownership, and an independent right to make duplications. The first mentioned right is unaffected by either a common-law or statutory copyright, and one right or both rights are subject to disposition, absolute or qualified, in common with other property rights by bequest, gift, sale, operation of law, or any mode by which personal property is transferred. The common-law right is more than a right to copy and includes the sole right to perform, publish, dramatize, or copy (23 ALR 2d 262 S.3).

It is sometimes described as the right to first publish.

"The common law awards the ownership of property in intellectual productions to those who create them." Werckmeister v. American Lithographic Co. (CA2) 134 F 321.

The common-law right right of property in literary or intellectual production which exists independent of and notwithstanding copyright statutes, entitles the proprietor thereof to the exclusive use of the production before publication. He has the sole and exclusive right to perform, dramatize, or copy the production until he permits a general production (Caliq v. Inter. Ocean Newspaper Co., 215 US 182, 54 L Ed 150, 30 S Ct. 38; Holmes v. Hurst, 174 US 82, 43 L Ed 904, 19 S Ct 606), as well as the right of first general publication (Bobbs-Merrill Co. v. Straus (CA2 NY) 147 F 15, affd 210 US 352, 52 L Ed 1094, 28 S Ct 735).

In other words, the author has an exclusive right of property in his composition until, by publication, it becomes the property of the general public (Associated Press v. International News Service (CA2) 245 F 244, 2 ALR 317, affd 248 US 215, 63 L Ed 211, 39 S Ct 68; Stanley v. Columbia Broadcasting System Inc., 35 Cal 2d 653).

Common-Law rights of an author in his literary and artistic works or productions, before publication, are recognized on substantially the same basis as in any other property he might possess(Little v. Hall, 18 How (US) 165, 15 L Ed 328). He may exercise full dominion over such productions, and the public has no greater rights to them than it would have to any other part of his personal property, no matter how useful it might be. It is exclusively for him to determine whether the work shall be published at all, and, if it is to be published, when, where, by whom, and in what form (Palmer v. DeWitt, 47 NY 532).

50

In other words, the author of an manuscript, so long as he does not publish it, may keep it as a private matter which he is not obliged to give to the world, and he has a special interest therein which entitles him to prevent its publication (State v. State Journal Co, 75 Neb 275, 106 NW 434).

Granting that an intellectual production has been put into tangible form, there seems to be no limitation upon the kind of literary productions which will be protected at common law. Rights at common law exist in:

> Literary, dramatic, musical compositions, letters, designs for works of ornament or utility, maps, lectures, information, news, radio, television programs, interpretations of other's compositions, advertising plans or slogans.

Literary property which is protectable may be created out of unprotectable material such as historical events, etc. The ownership of such rights being dependent upon whether the author was commissioned to produce the work or whether he produced it gratuitously or for his own benefit.

Creation, in its technical sense, is not essential to vest one with rights in intellectual property. Thus, a compiler who merely gathers and arranges, in some concrete form, materials which are open and accessible to all who have the mind to work with like diligence IS AS MUCH THE OWNER OF THE RESULT OF HIS LABORS AS IF HIS WORK WERE A CREATION RATHER THAN A CONSTRUCTION (Desny v. Wilder, 46 Cal 2d 715, 299 P2d 217).

It is quite clear on principle, and also in the light of the authorities, that one who has by his labor and expense compiled and arranged a set of facts, or a body of information, or news, has, at common law, a property right in the form in which his production is expressed.

One's possession of information or news, which he has obtained or compiled, and put in form for a specific use and which he furnished orally or in writing or print, it a right which ought to be protected against those who attempt to share it with him without his consent, and such right will be protected without reference to the question whether it would be possible or practicable to obtain a copyright on such compilations (International News Service v. Associated Press, 248 US 215, 63 L Ed 211, 39 S Ct 68, 2 ALR 293; Board of Trade v. Christie Grain & Stock Co., 198 US

236, 49 L Ed 1031, 25 S Ct 637, affd (CA7) 130 F 507; McDearmott Commission Co. v. Board of Trade, (CA8) 146 F 961; National Teleg. News Co. v. Western Union Teleg. Co., (CA7) 119 F 294, 104 ALR 876). A compilation of information or news has been protected under the general powers of equity to preserve property exclusive of the principles of literary property.

Even though there is a statutory copyright, it is settled that the copyright acts do not abrogate the author's common-law literary rights, and common-law rights in other intellectual productions, are abandoned or extinguished when the owner obtains a copy right therefor under the federal statutes (17 USCA).

Authorship implies that there has been put into a production something meritorious from the author's own mind; that the product embodies thought of the author, as well as the thought of others; and it would not have found existence in the form presented, but for the distinctive individuality of mind from which it sprang (National Teleg. News Co. v. Western Union Teleg Co).

While it is difficult to define comprehensively what character of writing is copyrightable within the meaning of the federal statutes and what is not, any writing which is the result of intellectual labor constitutes "writings of an author" 17 USC S.4.

No one now claims that the word "writing" in the Constitution, although it is the only word used descriptive of the subjects in regard to which authors are to be secures, is limited to the actual script of the author. By "writings" in that clause are meant the literary productions of authors, and Congress very properly has declared these to include ALL FORMS OF WRITING, PRINTING, ENGRAVING, ETC. by which the ideas in the mind of the author are given visible expression. (1 Studies on Copyright, pg. 45, 67 31 NYU L. Rev 1264 et seq).

All that is needed to satisfy both the Constitution and the statute (Copyright) is that the author contribute something more than a "more trivial" variation...something recognizable as "his own".

It is not necessary that an author of the entire work in which the copyrighted matter appears, or that every element of the work bear the marks of

originality.

There is no limit to what can be copyrighted; and by the same token, there is no limit to common-law copyright (17 USC S.1-8).

Within the limited of his right of property, an author or his successors have, at common law, a right of action for damages against anyone who undertakes to publish the author's production without authority, and these common-law rights in unpublished works are expressely maintained and declared not to be limited by the Copyright Act (18 Am Jur 2d Copyright Sec. 135, 136).

This translates quite simply to:

1. When information is imparted to you, you have physical ownership of it.

2. However, the copyright owner(s) retain(s) ownership of the contents.

3. You cannot disclose without the permission or consent of the copyright owner(s).

4. This includes data, information, compilations, etc.---both oral and written---such as financial statements. Any contents, compilation, or information remain the exclusive property of the owner(s) under Common-Law Copyright.

5. Unauthorized publications have remedy in recovery of damages for invasion of common-law rights, both as property rights and Statutory Copyright (19 Am Jur 2d, Copyright Sect. 135, 136).

Respectfully submitted,
Pro se

Marvin S. Antelman

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

C.A.80-0595

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for himself and
TILACO CHEMICALS LTD.

FILED

JUN 24 1981

CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

INTERVENOR'S MOTION TO VACATE ORDERS AND QUASH SUMMONS

Now comes the Intervenor in the aforementioned matter and, under Rule 60 (b) (3) and 60 (b) (2), moves that the Court quash the summons in this case retroactively and vacate its order of May 27, 1981 denying Intervenor's right to intervene and its order of June 9, 1981 denying Intervenor's motion to compel answers to interrogatories for the following reasons:

1) The IRS has misrepresented its case to the Court, stating at the hearing of December 29, 1980 that no criminal matter was involved nor contemplated when in reality Intervenor was under criminal investigation. The IRS, on June 12, 1981, attempted unsuccessfully through breaking and warrentless entering and criminal trespass to deliver a summons (Exhibit A) which clearly stated that Intervenor was under investigation by the criminal division. That Intervenor was under criminal investigation prior to December 29, 1980 is attested to by Exhibit B which show IRS documents classifying Intervenor as a tax protestor as early as December 7, 1978. The term "tax protestpr" is the IRS code for designating a party for criminal investigation as is illustrated in the accompanying Memorandum of Law.

2) TILACO CHEMICALS LIMITED, though having engaged Richard K. Foster to represent its interest on December 29, 1980, was not represented by licensed counsel that day, for Mr. Foster despite his physical presence in the Court that day, officially withdrew as TILACO'S counsel. The Court only allows corporations to be represented by licensed counsel.

Summons

Department of the Treasury
Internal Revenue Service

... of taxpayer: TILACO CHEMICALS LTD (01-0221638)

... Rhode Island

Periods: Calendar Years ...

EX A

To: Commissioner of Internal Revenue
INSVET S. ANTELMI, President
TILACO CHEMICALS LTD.
330 Silver Spring Street
At Providence, Rhode Island 02904

... Special Agent Richard J. Durant
... to give testimony, produce books, papers, records, and other data relating to the tax liability or the collection of the tax liability of the taxpayer identified above for the periods shown.

... any and all corporate records of TILACO CHEMICALS LTD, of 330 Silver Spring Street, Providence, Rhode Island, and 1300 Market Street, Wilmington, Delaware, for the period from January 1, 1977 through December 31, 1979, to include but not ... to

Receipts and disbursement Journals
General Ledger and Journal
Payroll Journal
Accounts Payable and Receivable and subsidiary ledgers
Chart of Accounts
Profit and Loss Statements
Balance Sheets and related workpapers
Records of all banking and financial institution transactions to incl...

... bank statements, monthly statements, cancelled checks, deposit and withdra... slips, loan agreements and applications, financial statements, loan ledger cards, check stubs

Invoices, bills, and expense vouchers and documents
Organization and ownership information and documents
Corporate minutes
Any accountants workpapers relating to the preparation of income tax returns ...
the maintenance of corporate records to include depreciation and inventory ...

... the Commissioner of Internal Revenue Service officer named above

... Providence, Rhode Island 02903 Telephone: 849-7071

... criminal investigation, 130 Broadway, Providence, Rhode Island 02903

on the 22nd day of June, 19 81 at 10:00 A.M.

... Internal Revenue Code this 12th day of June

... Special Agent

... Group Manager

Internal Revenue Service

Department of the Treasury

[illegible]
Director

P.O. Box 6628 Providence, R.I. [illegible]

March 3, 1980

Richard V. Foster
Attorney at Law
Pole 171
Great Road
Lincoln, Rhode Island 02865

EXHIBIT B

Dear Mr. Foster:

This is in response to a Freedom of Information request filed by you on behalf of your client, Marvin S. Antelman.

I am enclosing the documents you requested that are under the jurisdiction of the Providence District.

We are withholding one document (3 pages) which is an intra-agency memorandum. This decision is based on a determination that release of this document would interfere with the Service's administration of the Internal Revenue Code. The following paragraph identifies the specific exemptions applicable to the affected document.

Exemption (b)(7)(A) of the Freedom of Information Act states that investigatory records compiled for law enforcement purposes will not be disclosed if such disclosure would materially interfere with enforcement proceedings. Additionally, exemption (b)(3) of the Act excludes from disclosure documents specifically exempt by statute. Sections 6103 (c) and 6103(e)(6) of the Internal Revenue Code exempt disclosure of return information if it would seriously impair Federal tax administration. We are, therefore, exempting the above mentioned document.

Enclosed is a copy of Notice 393 (Rev. 12/77) which states the procedures you should follow if you wish to appeal my decision to exempt certain documents. If you have questions concerning this response or your appeal rights, please contact my Disclosure Officer at 528-4888.

Sincerely yours,

Charles E. Roudy
CHARLES E. ROUDY
District Director

Enclosures: 47 pages
Notice 393
Form 5423

REOPENING MEMORANDUM

REQUEST FOR:

☒ APPROVAL TO REOPEN A CLOSED EXAMINED CASE

☐ ISSUANCE OF LETTER 950, NOTICE OF REEXAMINATION

DISTRICT CODE 05

TAXPAYER (NAME AND ADDRESS)

MARVIN S & SYLVIA
5 PROSPECT AVENUE
[illegible], Mass. 01[illegible]

SECTION A - CLEARANCE RECORD

(Number used in indicating sequence)	SECTION	SIGNATURE	SYMBOLS	DATE
1 GROUP MANAGER	Approve	[illegible]	[illegible]	[illegible]
2 [illegible]	Approved	[illegible]	[illegible]	[illegible]
3 CHIEF, EXAMINATION BRANCH	Approve	[illegible]	[illegible]	[illegible]
4/ DISTRICT DIRECTOR	✓	[illegible]		7/28/80
[illegible] EXAMINATION OR DIRECTOR, RID				

SECTION B - JUSTIFYING DATA

1 REASON FOR REQUEST (Items 2 through 5)

2 FACTS

	PERIOD	YEAR
A TAX RETURN	1040	7912
B EXPIRATION DATE	10-15-80	
C METHOD OF EXAMINATION	Off. Audit	
D TAX DISCUSSED IN LETTER OR AS PREVIOUSLY ADJUSTED	$614.11	
E ESTIMATED ADDITIONAL TAX	Not Applicable	

a EVIDENCE OF FRAUD, MALFEASANCE, COLLUSION, CONCEALMENT, DISHONEST REPRESENTATION OF MATERIAL FACT

b [illegible] AS ERROR

51 SERIOUS ADMINISTRATIVE OMISSION RESULTING IN CRITICISM UNDESIRABLE PRECEDENT OR INCORRECT TAX TREATMENT

3 NARRATIVE JUSTIFICATION (Form 1144)

4 SIGNATURE

[illegible]

5 TITLE

REVENUE AGENT

ORGANIZATION SYMBOLS

[illegible] A. 1[illegible]

DATE

12-

SECTION C - RESULTS (Complete only if case is reopened)

6 DATE OF NOTICE OF INTENTION TO ASSESS OR REFUND OR STATUTORY REPORT

7 TAX RETURN

8 TAX CHANGE

	YEAR	YEAR
a ADDITIONAL TAX	$	$
b OTHER [illegible]	$	$

INSTRUCTIONS

[illegible]

[illegible]

[illegible]

[illegible]	EXPLANATION OF ITEMS

[illegible]

HARVIE S & SYLVIA ANTILMAN

2.a. The method of previous audit was a change made by the and [illegible] Center referred to the Collection DIVISION for follow-up [illegible]. Report form 1902X was issued to the taxpayer.

2.b. There is no estimate of additional tax due(See narrative [illegible] information

3. NARRATIVE JUSTIFICATION

This request for reopening is made because of audit of related corpor[illegible] Tivian Laboratories. The taxpayer is involved in the taxpay[illegible] movem[illegible] and has failed to cooperate in substantiating items on the [illegible] that affect his personal 1040.

The agent is requesting this reopening because it is felt that the fail[illegible] to reopen this closed case would result in establishing a pr[illegible]dent that would seriously hamper subsequent attempts by the Service to take corr[illegible] action.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DeCATALDO, Revenue Agent, Petitioners	
v.	C.A. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	
and	
MARVIN S. ANTELMAN, Intervenor for himself, and TILACO CHEMICALS LTD.	

INTERVENOR'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION TO
VACATE ORDERS AND QUASH SUMMONS

The Term "Tax Protestor", as used by the IRS, is their code word for a criminal prosecution. Said status is indicative of IRS attempts at selective prosecution and attempted criminal investigation. Said designation and its indication were clearly involved in US v. La Salle Bank, 37 AFTR 2d 76-1239. The Court ruled that,

> "Internal Revenue Summons issued under such circumstances is not issued in good faith."

Intervenor asserts that the IRS arguments before this Court are not in good faith because Intervenor's file was transferred to the criminal division: which is similar to the LaSalle case where the file was transferred to the Intelligence Division (now criminal).

The Fifth Circuit Court of Appeals in US v. Tweel, 550 F 2d 297 (Fla, 1977) found that high level IRS officials succeeded

"in masking the undeniable criminal nature of this investigation".

The Court stated,

> "We cannot condone the shocking conduct by the IRS. Our revenue system is based upon the good faith of the taxpayers and the taxpayer should be able to expect the same from the government in its enforcement."

Some other cases of bad faith IRS actions are: US v. Roundtree, 420 F 2d 586; DI Co. v. US, 321 F 2d 586 (Nev 1963); US v. Wolrich (NY 1955) 129 and Fed. Supp. 528; US v. Kessler, 346 F Supp. 66 (Ohio, 1973); US v. Kelechkner, 273 F Supp 251 (Ohio, 1967).

In La Salle Supra, the Court held that,

> "Another improper purpose which the service may not pursue... is to gather evidence solely for a criminal investigation."

In this case, the fact that intervenor Marvin S. Antelman, has been classified as a Tax Protestor by the IRS alone shows the "improper purpose".

Furthermore, in a current case pending in the United States District Court, Third District of Pennsylvania;on May 18, 1981, a District Director attempted to hide the fact that he was pursuing a "tax protestor" and was exposed in his perjury. The Court demanded the IRS furnish a full accounting of its "anti equal protection under the law" Tax Protestor Procedures (US v. Skirpin, 81-1189-1191).

The very fact that intervenor has been treated as a Tax Protestor is clearly within the category of "clear and hostile discriminations against particular persons..." (Bell's Gap R. Co. v. Pennsylvania, 134 US 232, 237 (1890) and violates the equal protection guarantees of the Fourteenth Amendment. In Yick Wo v. Hopkins, 118 US 373 (1886) the US Supreme Court declared,

> "Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights; the denial of equal justice is still within the prohibition of the Constitution."

Furthermore, what the IRS has done to Intervenor is similar to the Court's finding in States v. Falk, 479 F 2d 623, where thre Court stated,

> "It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups...by selective enforcement of an extremely broad prohibitory statute."

This would be true even if Intervenor were a Tax Protestor; actually Intervenor files tax returns and pays taxes so that characterization is untrue and false. Furthermore, even if he were a Tax Protestor , Chief Judge Bazelson stated:

"The government may not prosecute for the purpose of deterring people from exercising their right to protest official misconduct and petition for redress of grievances. Morever, a prosecution under such circumstances would be barred by the equal protection clause, since the government employs an impermissable classification...." (Dixon v. District of Columbia, 394 F2d 966, 968 (D.C. Cir 1968).

Respectfully submitted,
Pro se

_____

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

CERTIFICATE OF SERVICE

I, Marvin S. Antelman, hereby certify that on June 24, 1981, I served the Intervenor's Motion to Vacate Orders and Quash Summons and its accompanying Memorandum of Law upon Seymour Posner, Assistant US Attorney by mail or in hand and to counsel for IN Bank and Kathy Lawson, all in Providence, RI.

_____

Marvin S. Antelman

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DECATALDO, Revenue Agent,	)	
Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager,	)	
Respondents	)	

PETITIONERS' OBJECTION TO "INTERVENORS'"
MOTION TO VACATE ORDERS AND QUASH SUMMONS

Now come the Petitioners herein by their attorneys, and object to the "Intervenors'" Motion to Vacate Orders and Quash Summons for the reasons set forth in the accompanying Memorandum of Law.

Respectfully submitted,

UNITED STATES OF AMERICA and
MICHAEL DECATALDO, Revenue
Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney

SEYMOUR POSNER
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 1981, I served a copy of the foregoing Petitioners' Objection to "Intervenors'" Motion to Vacate Orders and Quash Summons, and accompanying Memorandum of Law, to the following, by mailing same, postage prepaid:

Marvin S. Antelman, pro se
Five Prospect Avenue
Newton, MA 02160

David W. Zizik, Esq.
Hinckley, Allen, Salisbury, & Parsons
2200 Industrial Bank Building
Providence, Rhode Island 02903

Donna G. Gibson

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and MICHAEL DECATALDO, Revenue Agent, Petitioners	)	
vs.	)	C.A. No. 80-0595
INDUSTRIAL NATIONAL BANK and KATHY LAWSON, Assistant Manager, Respondents	)	

PETITIONERS' MEMORANDUM OF LAW IN OPPOSITION TO "INTERVENOR'S" MOTION TO VACATE ORDERS AND QUASH SUMMONS

STATEMENT OF FACTS

In the above action to enforce an Internal Revenue Service Summons, this Court, by Order entered on December 30, 1980, grante the government's Petition for Enforcement of the Internal Revenue Service Summons served on respondent Industrial National Bank on September 11, 1980.

In compliance with the December 30, 1980 Order, respondent Industrial National Bank has been supplying petitioner DeCataldo with bank records relating and pertaining to Tivian Laboratories, Inc. and Tilaco Chemicals, LTD. No appeal was taken from this Court's December 30, 1980 Order.

On April 16, 1981, Marvin S. Antelman filed a Motion to Intervene and for Writ of Injunction on behalf of himself and Tilaco Chemicals LTD. On May 27, 1981, Chief Judge Pettine denied "Intervenors'" Motion to Intervene and for Writ of Injunction on the grounds that the matter is now Res Adjudicata.

On June 30, 1981, Marvin S. Antelman filed a Motion to Vacate Orders and Quash Summons, in which he moved, under Rule 60(b)(3) and Rule 60(b)(2), FRCivP, that this Court quash retroactively the Internal Revenue Service Summons served on September 11, 1980 on Industrial National Bank and Kathy Lawson, Assistant Manager. Further, "Intervenor's" Motion requested this Court to vacate its Order of May 27, 1981, denying "Intervenor's" right to intervene and its Order of June 9, 1981, denying "Intervenor's" Motion to Compel Answers to Interrogatories.

As reasons for the granting of his Motion, "Intervenor" states therein that the Internal Revenue Service, at the hearing before this Court on December 29, 1980, misrepresented its case to this Court that no criminal matter was involved or contemplated; that in reality, "Intervenor" Antelman was under criminal investigation back on December 29, 1980, as shown by the service of a new Summons "which clearly states that Intervenor was under investigation by the Criminal Division"; that Tilsco Chemicals LTD was not represented by legal counsel on December 29, 1980 and therefore was not represented in Court on that day.

ARGUMENT

Rule 60(b) of the FRCivP states that "The Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

> . . .(2)"newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)."
>
> (3)"Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. . ."

There has been no fraud, misrepresentation, or other misconduct by the government in this case. When Revenue [illegible] served a Summons on the Industrial

65

national Bank on September 11, 1980, it concerned the tax liability of Tivian Laboratories, Incorporated of Providence, Rhode Island. An investigation was being conducted by a Revenue Agent of the Internal Revenue Service in connection with the civil tax liability of a corporation and not Marvin Antelman. At that time, the case had not even been referred to the Criminal Investigation Division to determine whether any possible criminal violations of the Internal Revenue Code had been committed. Since the rights and obligations of the government, the summonsed parties and taxpayer are fixed at the date the summons is served, Couch vs. United States, 409 U.S. 322, 329, n.9 (1973), the validity of a summons is "to be determined by the facts as they exist at the time of the issuance of the summons." United States vs. Weingarden, 473 F.2d 454,461 (6th Cir. 1973); United States vs. Garrett, 571 F.2d 1323, 1327 (5th Cir. 1978); United States vs. Cromer, 483 F.2d 99, 101 (9th Cir. 1973). Events subsequent to the issuance of the summons do not alter or effect the enforcibility of that summons. See United States vs. Lyons, 442 F.2d 1144 (1st Cir. 1971); United States vs. Roundtree, 420 F.2d 845, 847, n.3 (5th Cir. 1969).

The fact that a second summons was issued by the Criminal Investigation Division and was served on the president of another corporation nine (9) months after the first summons does not prove fraud or misrepresentation on the part of the government. Since this Court, on December 30, 1980, ordered respondent Industrial National Bank to comply with the Summons issued to it on September 11, 1980, numerous records of Tivian Laboratories, Incorporated have been turned over to the Internal 66

1980.

Revenue Service to enable it to investigate the tax liability of Vivian Laboratories, Incorporated. The nature of the records and the information contained therein apparently persuaded the Criminal Investigation Division to open a second investigation into the tax liability of Tilaco Chemicals LTD. As part of that investigation, Special Agents of the Internal Revenue Service served a second summons on Marvin Antelman as president of Tilaco Chemicals LTD. That Summons is directed to the tax liabilities of Tilaco Chemicals, LTD. and not to "Intervenor" Antelman personally. To this writer's knowledge, there is not presently a criminal investigation into the tax liabilities of Marvin S. Antelman himself, despite "Intervenor" Antelman's contention that he is classified by the Internal Revenue Service as a "tax protester" and that "tax protesters" is the Internal Revenue Service's code for designating that a party be criminally investigated.

There is no newly discovered evidence in this case which would justify the granting of "Intervenor's" Motion to Vacate Orders and Quash Summons. At the hearing before Chief Judge Pettine on December 29, 1980, Richard K. Foster represented Tilaco Chemicals LTD., as admitted by "Intervenor" Antelman in number two (2) of his Motion. After admitting Mr. Foster had been engaged to represent Tilaco Chemicals LTD., Mr. Antelman proceeds, by some verbal slight-of-hand, to state that Tilaco Chemicals LTD. was not represented by Mr. Foster's being in Court that day as he had "obviously withdrew as Tilaco's Counsel." When Mr. Foster withdrew, and what he was doing in Court on December 29, 1980 if he had in fact withdrawn as Tilaco's counsel, is unclear activity. Verbal withdrawals do not constitute adequate proof of the circumstances which occurred on December 29, 1980.

Finally, the government notes that "Intervenor" Antelman in his Motion states that "The Court only allows corporations to be represented by licensed counsel." Despite "Intervenor" Antelman's knowledge of that basic rule of law, all of his previous Motions herein (Motion to Intervene and for Writ of Injunction; Interrogatories, etc.) were brought on behalf of himself and Tilaco Chemicals LTD., allegedly a Delaware corporation, in violation of that basic rule of law.

CONCLUSION

For the reasons set forth above, "Intervenor's" Motion to Vacate and Quash Summons should be denied.

Respectfully submitted,

UNITED STATES OF AMERICA and
MICHAEL DECATALDO, Revenue Agent,

By their Attorneys,

PAUL F. MURRAY
United States Attorney

SEYMOUR POSNER
Assistant U.S. Attorney

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THR DISTRICT OF RHODE ISLAND

RECEIVED

JUL 21 1981

CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent
Petitioners

v.

C.A. 80-0595

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for
HIMSELF and TILACO CHEMICALS LTD.

INTERVENOR'S
STATEMENT OF FACTS

Now comes the Intervenor and makes the following statements of facts with respect to this action:

1. The IRS is reputed to have issued a document RC-SC Memorandum #92, dated June 25, 1976, which delineates that those persons classified by the IRS as "tax protesters" are designated for criminal investigation. Intervenor Marvin S. Antelman was classified as a tax protester by the IRS on December 7, 1978 (Intervenor's Motion to Vacate 6/24/81, Exhibit B).

2. The IRS obtained data on Tilaco's customers by utilizing information provided by Marvin S. Antelman in defense of a 1975 tax year involving him personally.

3. In that 1975 Tax Court case, the IRS alleged in its Assessment Section 6651 (a) and 6653 (a) that the taxes were filed late (US Court of Appeals First Circuit, 80-1414, Joint Appendix, p. 18).

4. Intervenor, Marvin S. Antelman, produced a UPS Book receipt dated April 14, 1976 to prove that he, in fact, filed the '75 return on time (Ibid, p. 19).

5. The IRS utilized the serial number from the UPS book to trace shipments to third parties from the address the 1975 Tax Return was sent: 330 Silver Spring Street, Providence, RI 02904.

6. On May 15, 1980, the IRS issued its so-called Summons Form #2039A to UPS, requesting all information on recipients of shipments. The IRS utilized this information to trace checks issued by Tilaco's customers to its bank account at IN Bank in Providence, RI, resulting in this action.

7. A third party summons is suspended according to the IRS Code as long as,

> "Any proceeding and appeals related to the enforcement of the Summons is pending." (Form 2039D).

8. Intervenor maintains that IN Bank was ill-advised by its counsel Hinckley Allen to turn over the financial statements which are the subject of this intervention, for due process has not expired in this action and even the IRS regulations concede this, in addition to Intervenor's Constitutional objections to the jurisdiction of the summons.

9. The Court has not addressed itself to the question of Common Law Copyright raised in this proceeding.

10. Petitioners' Memorandum of Law of June 30, 1981 states:

> "Finally, the government notes that 'Intervenor' Antelman in his Motion states that 'the Court only allows corporations to be represented by licensed counsel.' Despite 'Intervenor' Antelman's knowledge of that basic rule of law, all of his previous Motions herein (Motion to Intervene and for Writ of Injunction; Interrogatories, etc) were brought on behalf of himself and Tilaco Chemicals LTD., allegedly a Delaware corporation, in violation of that basic rule of law."

Actually Intervenor was very specific in delineating how he intervened on behalf of the corporation. He did not intervene at the time (April 16, 1981) of this intervention because he was Tilaco's President; but rather in the limited capacity allowed under FRCP which he stated in his Motion to Intervene (Section 4) that his capacity was:

> "that of Intervenor for the Corporation as a stockholder".

11. Intervenor has requested a transcript of the proceedings of December 29, 1980 in this action to support his contention that Tilaco Chemicals LTD. was not represented that day in Court.

12. Intervenor attended an informal hearing on Friday, July 17, 1981 at the 6th District Court for Providence in the Chambers of Judge LaLiberte, initiating an Arrest Warrant against IRS Agent Richard Durant for illegal and warrantless entry, and breaking and entering.

13. In Petitioners' Memorandum of Law of June 30, 1981, the government fails to state the "Probable Cause" for designating Tilaco Chemicals LTD. for criminal investigation.

14. Despite Petitioners' contention that the second summons is directed to the tax liabilities of Tilaco Chemicals LTD. and to Intervenor Antelman, personally, it should be pointed out that:

a) The original summons was dealing, supposedly, with "Tivian Laboratories, Inc.".

b) The present criminal summons deals with "Tilaco" through investigation Tivian.

c) There are new summons (Exhibits A, B, C) in this criminal investigation on non corporate entities related to Intervenor.

d) There is nothing to prevent the IRS from using this information in a contrived criminal prosecution against Intervenor personally, especially since the instant action originated from information obtained in Intervenor's personal tax case.

15. To date, a total of 26 IRS summons have been served directly by the IRS and indirectly by banks (served by the IRS) on Intervenor, personally, and Tilaco.

16. Three attorneys who have been retained as counsel for Tilaco and Intervenor, namely, Lawrence Altman and Richard Foster of Rhode Island, and Stephen Hallenbaum of Massachusetts, have each separately termed the behavior of the IRS as "harassment".

17. Intervenor has pending a civil rights action in the US District Court for Massachusetts (79-2004S) which among other charges accuses the IRS of anti-

papers (USDC Ma C.A. #79-2004S, Exhibit J), and because the same IRS Agent disallowed charity contributions to Jewish Institutions and would not allow Chanuka Gifts the same tax treatment as Christmas gifts.

The IRS of RI has because of its incessant policies of violating people's civil rights gotten the reputation of an IRS group with the lowest morale in the United States. A recent newspaper story highlighted this complaint by the NTEU (National Treasury Employees Union). (See Exhinit D).

18. Intervenor maintains that this intervention concerns records, different in content and character, from those bank records obtained by the IRS in the Hearing of December 29, 1980. It concerns financial statements protected by common law copyright.

Respectfully submitted,
pro se

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

CERTIFICATE OF SERVICE

This is to certify that a copy of Intervenor's Statement of Facts was served by hand to the US Attorney's Office in Providence on the 21st Day of July, 1981, and mailed to IN Bank's counsel, Hinckley Allen.

Marvin S. Antelman

EX A

Summons

Department of the Treasury
Internal Revenue Service

to exhibit of TILCO CHEMICALS LTD. (51-0221630)

at of Providence, RI Calendar Years
Periods 1977 through 1979

Internal Revenue
Industrial National Bank - ANN HOLE GARRAS, ADMINISTRATIVE
Verification Center
135 Dupont Drive
Providence, RI

and required to appear before Special Agent Richard J. Durant
or testimony relating to the tax liability or the collection of the tax liability
and produce for examination the following books records papers and other

See attachments 1 & 2

Phone number of Internal Revenue Service of

73

EX B

Attachment #1

Any and all records to include:

1. Records which identify the type of account to which the attached copies of TILACO, TIVIAN LABORATORIES COMPANY checks were credited and/or deposited (see attachment #2).

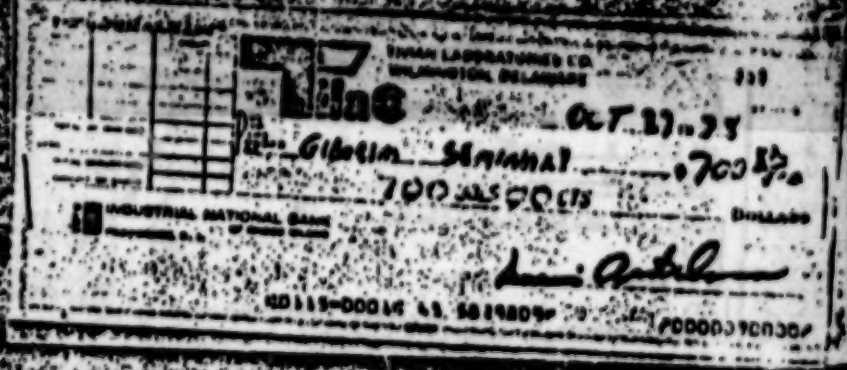
2. Records, including signature cards and/or loan account cards, which identify those individuals and/or entities authorized to utilize this account or benefit from it for the years 1977 through 1980. For example, those authorized to sign checks and/or make withdrawals if the account were a savings or checking account. Or in the case of some type of loan account and/or credit card account, the identity of the individual or entity in whose name the loan and/or credit card appears and the identity, type, and location of any property used as collateral on any loan account. Also, records which identify the address(es) used by the bank to correspond with any and all individuals and/or entities associated with these accounts.

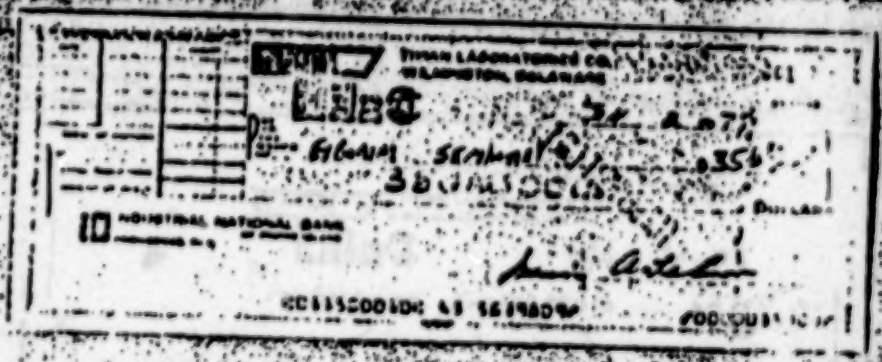
3. Records, including ledger cards, bank statements, cancelled checks, deposit and withdrawal slips, deposited checks, transcript of account, bank checks, loan applications, credit information, financial statements, and credit card

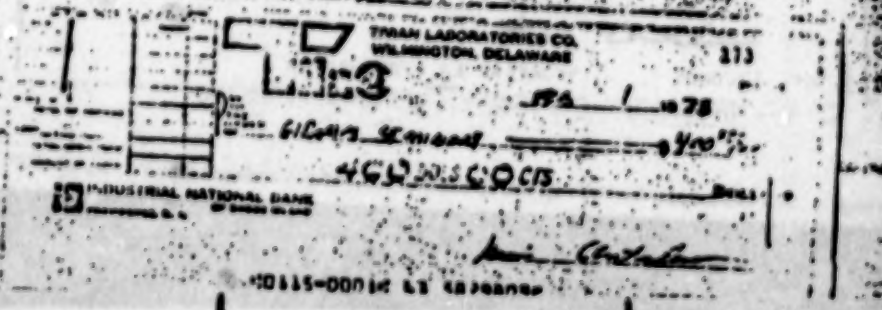
EX C

Best Copy Available

ATTACHMENT #2







EX D.

Best Copy Available

ATTACHMENT #2

EX D

IRS Morale Hits New Low

By H. D. Taylor

The National Treasury Employees Union (NTEU) has concluded that morale in the Providence, Rhode Island district of the Internal Revenue Service (IRS)—and the entire IRS, perhaps—"has plummeted to an unprecedented low."

The conclusion was drawn from a survey by the NTEU of 170 IRS employees in the Providence district office. Sixty-five percent of the 170 polled responded. NTEU Chapter 56 President Albert H. Thornton Jr. said he predicted the survey results.

The first question of the survey was, "Would you recommend the IRS as a good place to work?" Thirty-seven percent responded "yes," and 63 percent said the IRS was not a good place to work.

The next question was, "How do you view the morale in your work group?"

The answers were: Morale is good, 6 percent; morale is fair, 26 percent; morale is poor, 36 percent; morale is low, 32 percent.

The next question asked was, "How do you view the morale of your work group compared with three years ago?" Only 2 percent of the respondents said morale was "much higher" or "higher." Eighty-one percent said morale was "lower" or "much lower." Seventeen percent said morale was about the same.

The NTEU asked a total of 48 questions, covering areas of morale, employer-management relations, promotions and the union itself. NTEU notes that nearly half the employees who participated in the survey indicated they were seriously thinking about seeking employment outside the service."

Said the February 26 issue of the NTEU "Bulletin": "Questioned about management's professional competence, 55 percent indicated that mid- and upper-level management were not sufficiently knowledgeable to make policy decisions affecting those at the working level.

"Over 95 percent asserted that these managers were primarily concerned with doing whatever would further their own careers, rather than with the goals of the service and the employees."

Thornton and NTEU Legislative Liaison Patrick Smith met recently with Sen. John Chafee (R-R.I.) to discuss the problem of low employee morale in the Providence district office. Chafee promised to examine the problem.

77

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,
Respondents

and

HARVIN S. ANTELMAN,
Intervenor for
HIMSELF and TILACO CHEMICALS LTD.

RECEIVED

JUL 21 1981

CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

C.A. 80-0595

MOTION FOR STAY OF PROCEEDINGS
AND ACTIONS RESULTING THEREFROM

Now comes the Intervenor, Harvin S. Antelman in this matter and moves this Honorable Court to stay this proceeding until his appeal is adjudicated in the United States Court of Appeals for the First Circuit.

Intervenor requests a stay on all actions by the IRS against Tilaco Chemicals Ltd. and any "persons" as defined by the Right to Financial Privacy Act of 1978, Title 12 USC, Section 3401, affiliated with Intervenor, resulting from information from the financial statements obtained in this action protected by Common Law Copyright; as well as from any Administrative Summons associated with this case.

Respectfully submitted,
pro se

Harvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

CERTIFICATE OF SERVICE

This is to certify that a copy of the Motion for Stay of Proceedings and Actions Resulting Therefrom was served by hand to the US Attorney's Office in Providence on the 21st Day of July, 1981, and mailed to IN Bank's counsel, Hinckley Allen.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and
MICHAEL DeCATALDO, Revenue Agent,
Petitioners

v.

INDUSTRIAL NATIONAL BANK and
KATHY LAWSON, Assistant Manager,
Respondents

and

MARVIN S. ANTELMAN,
Intervenor for
HIMSELF and TILACO CHEMICALS LTD.

C.A. 80-0595

FILED

JUL 24 1981

CLERK
U. S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

NOTICE OF APPEAL

Notice is hereby given that Intervenor Marvin S. Antelman hereby appeals to the United States Court of Appeals for the First Circuit orders entered in this case of December 13, 1980; December 30, 1980 relating to Summons enforcement; of May 27, 1981 with respect to Intervention; of June 9, 1981 with respect to Interrogatories and of July 9, 1981 with respect to Vacating Orders.

Respectfully submitted,
pro se

Marvin S. Antelman
5 Prospect Avenue
Newton, MA 02160

CERTIFICATE OF SERVICE

This is to certify that a copy of the Notice of Appeal was served by hand to the US Attorney's Office in Providence on the 24th Day of July, 1981, and mailed to IN Bank's counsel, Hinckley Allen.

Marvin S. Antelman

| DIST. | DIV. | VR. | NUMBER | MO. | DAY | YEAR | | |

DATE 1980	NR	PROCEEDINGS
Nov 19		Petition to Enforce Internal Revenue Service Summons, filed. Order to Show Cause, filed.
Dec 3		Order to show cause granted; set down for December 29, 1980 at 9:00 a.
Dec 9		Process receipt returned and filed. sc
Dec 10		Reply of Industrial National Bank and Kathy A. Lawson to petition to enforce Internal Revenue Summons filed. cz
Dec 29		Show cause heard in open court -- Mr. Posner to file an order. sc
Dec 29		Victim Respondent's special appearance and response to order to show cause filed. sc
Jan 5		ORDER re: respondents shall comply with the Summons; and each requirement served upon them and shall produce all docts required before any agent of the IRS on Jan 15, 1981 at 10:00 a.m.. sc
Apr 16		Deft, Antelman's motion to intervene and for writ of injunction fld.sc
Apr 27		Pltf's motion for enl of time to respond to motion to intervene and for Writ of Injunction and interros filed until May 11, 1981. sc
May 11		Pltffs' motion for ext. of time to May 22, 1981 to respond to Antelman motion to intervene and for Writ of injunction filed. cz
May 11		pltffs' motion for ext. of time to May 22, 1981 to respond to Antelman' motion to intervene and for writ of injunction is granted.cz
May 12		Intervenor's motion to dismiss for failure to prosecute filed. cz
May 11		Plaintiffs Motion for Enlargement of Time to respond to the Mtn. to Intervene and Writ of Injunction and the Interr. up to and including May 22, 1981 is granted. jr
May 13		Plaintiffs Motion for Enlargement of Time to respond to Mtn. to Intervene and for Wri of Injunction and Interr. up to and including May 11, 1981 is passed as moot. j
May 18		Pltffs' objeciton to motion to intervene and for writ of injunction filed. cz
May 18		Pltffs' objection to motion to dismiss filed.cz
May 19		Intervenor's motion for a judge to vacate Mag.'s order, and objection to corrupt ex parte practice filed. cz
May 19		Pltffs' objection to intervenor's motion to vacate Mag.'s order filed.cz
May 22		Intervenor's objection to Petitioners' objection to his motion to vacate Magistrate's order filed.cz
May 27		Intervenor's motion to compel discovery filed. sc
May 27		Intervenor's motion for a judge to vacate Mag.'s order, and objection to corrupt ex parte practice is denied--the action taken is not in contravention of Local Rule 12(a)(2).cz
May 27		Intervenor's motion to dismiss for failure to prosecute is denied. cz
May 27		Intervenor's motion to intervene and for writ of injunction -- this matter is now res adjudicata. The motion to intervene and for writ of injunction is denied. cz
June 1		Notice regarding change of counsel for the bank filed. sc
June 2		Pltf's objection to "Intervenors" motion to compel discovery fld. sc
June 3		Intervenor's notice of copyright filed. sc
June 9		Intervenor's motion to compel discovery is denied. sc
June 24		Intervenor's motion to vacate Orders and quash summons filed. cz
June 30		Petitioners' objection to "intervenors'" motion to vacate orders and quash summons filed. cz
July 9		Intervenor's motion to vacate orders and quash summons is denied. sc
July 21		Intervenor's motion for stay of proceedings and actions resulting there filed. sc
July 21		Intervenor's statement of facts filed. sc

IL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 80-0595
United States of America	Industrial Nat'l Bank	PAGE 2 OF ___ PAGES

DATE	NR.	PROCEEDINGS
1981		
uly24		Intervenor's complaint of Irregularities filed.sc
uly 24		Intervenor's notice of appeal filed; fee of $70.00 paid. sc
uly 27		Pleadings sent to court of appeals. sc
July 27		Transcript of December 29, 1980 filed.sc

DC 1110 (Rev. 82

(3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and

(4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.

Source: New.

Amendments:	Sec. as amended effective:	P.L. 94-455, § 1906(b)(13)(A):
P.L. 94-455, § 1906(b)(13)(A)	2-1-77	Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared.

[Sec. 7608(b)]

(b) ENFORCEMENT OF LAWS RELATING TO INTERNAL REVENUE OTHER THAN SUBTITLE E.—

(1) Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws or any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

Source: New.

Amendments:	Sec. as amended effective:	P. L. 87-863, § 2(a):
P.L. 94-455, § 1906(b)(13)(A)	2-1-77	Amended Code Sec. 7608 to add subsection (b) to read as above and to delete "Any" in line 1 and insert the following:
P. L. 87-863, § 2(a)	10-24-62	"(a) Enforcement of Subtitle E and Other Laws Pertaining to Liquor, Tobacco, and Firearms.—Any".
P. L. 85-859, § 204(14)	9-2-58	P. L. 85-859, § 204(14):
		Redesignated Sec. 7608 as Sec. 7609 and added new Sec. 7608 to read as above.

P.L. 94-455, § 1906(b)(13)(A):
Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared.

[Sec. 7609]

SEC. 7609. SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.

[Sec. 7609(a)]

(a) NOTICE.—

(1) IN GENERAL.—If—

(A) any summons described in subsection (c) is served on any person who is a third-party recordkeeper, and

(B) the summons requires the production of any portion of records made or kept of the business transactions or affairs of any person (other than the person summoned) who is identified in the description of the records contained in the summons,

then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 14th day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for stayed compliance with the summons under subsection (b)(2).

(2) SUFFICIENCY OF NOTICE.—Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) THIRD-PARTY RECORDKEEPER DEFINED.—For purposes of this subsection, the term "third-party recordkeeper" means—

(A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501(c)(14)(A));

(B) any consumer reporting agency (as defined under section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)));

(C) any person extending credit through the use of credit cards or similar devices;

(D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)));

(E) any attorney; and

(F) any accountant.

(4) EXCEPTIONS.—Paragraph (1) shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person,

(B) to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or

(C) described in subsection (f).

(5) NATURE OF SUMMONS.—Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(B)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(a), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a)
Added Code Sec. 7609(a), to read as above.

[Sec. 7609(b)]

(b) RIGHT TO INTERVENE, RIGHT TO STAY COMPLIANCE.—

(1) INTERVENTION.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) RIGHT TO STAY COMPLIANCE.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to stay compliance with the summons if, not later than the 14th day after the day such notice is given in the manner provided in subsection (a)(2)—

(A) notice in writing is given to the person summoned not to comply with the summons, and

(B) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

Source: New.

©1989, Commerce Clearing House, Inc.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1800(a):
Added Code Sec. 7609(b), to read as above.

[Sec. 7609(c)]

(c) SUMMONS TO WHICH SECTION APPLIES.-

(1) IN GENERAL.—Except as provided in paragraph (2), a summons is described in this subsection if it is issued under paragraph (2) of section 7602 or under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(h)(2) and requires the production of records.

(2) EXCEPTIONS.—A summons shall not be treated as described in this subsection if—

(A) it is solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in subsection (a)(3)(A), or

(B) it is in aid of the collection of—

(i) the liability of any person against whom an assessment has been made or judgment rendered, or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i).

(3) RECORDS; CERTAIN RELATED TESTIMONY.—For purposes of this section—

(A) the term "records" includes books, papers, or other data, and

(B) a summons requiring the giving of testimony relating to records shall be treated as a summons requiring the production of such records.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 98-223, § 232(d)(4)(E)	1-1-79
P.L. 95-600, § 702(k)(4), (r)	
P.L. 95-599, § 505(c)(6), (d)	
P.L. 94-455, § 1205(a)	

P.L. 98-223, § 232(d)(4)(E):
Amended Code Sec. 7609(c)(1) by substituting "6427(h)(2)" for "6427(g)(2)".

P.L. 95-600, § 702(k)(4), (r):
Substituted "6427(i)(2)" for "6427(e)(2)" in Code Sec. 7609(c)(1), effective October 4, 1976.

P.L. 95-599, § 505(c)(6), (d):
Substituted "6427(g)(2)" for "6427(e)(i)(2)" in Code Sec. 7609(c)(1), effective January 1, 1979.

P.L. 94-455, § 1800(a):
Added Code Sec. 7609(c), to read as above.

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

[Sec. 7609(d)]

(d) RESTRICTION ON EXAMINATION OF RECORDS.—No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the expiration of the 14-day period allowed for the notice not to comply under subsection (b)(2), or

(2) when the requirements of subsection (b)(2) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

Source: New

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1800(a):
Added Code Sec. 7609(d), to read as above.

[Sec. 7609(e)]

(e) SUSPENSION OF STATUTE OF LIMITATIONS.—If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	.....

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a):
Added Code Sec. 7609(e), to read as above.

[Sec. 7609(f)]

(f) ADDITIONAL REQUIREMENT IN THE CASE OF A JOHN DOE SUMMONS.—Any summons described in subsection (c) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	.....

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a):
Added Code Sec. 7609(f), to read as above.

©1980, Commerce Clearing House, Inc.

[Sec. 7609(g)]

(g) SPECIAL EXCEPTION FOR CERTAIN SUMMONSES.—In the case of any summons described in subsection (c), the provisions of subsections (a)(1) and (b) shall not apply if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a):
Added Code Sec. 7609(g), to read as above.

[Sec. 7609(h)]

(h) JURISDICTION OF DISTRICT COURT.—

(1) The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine proceedings brought under subsections (f) or (g). The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely upon the petition and supporting affidavits. An order denying the petition shall be deemed a final order which may be appealed.

(2) Except as to cases the court considers of greater importance, a proceeding brought for the enforcement of any summons, or a proceeding under this section, and appeals, take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a):
Added Code Sec. 7609(h), to read as above.

[Sec. 7610]

SEC. 7610. FEES AND COSTS FOR WITNESSES.

[Sec. 7610(a)]

(a) IN GENERAL.—The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

(1) fees and mileage to persons who are summoned to appear before the Secretary, and

(2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

Source: New.

Amendments:	Sec. as amended effective:
P.L. 94-455, § 1205(a)	

P.L. 94-455, § 1205(c), as amended by P.L. 94-528, § 2(b), provides as follows:

(c) Effective Date.—The amendments made by this section shall apply with respect to any summons issued after February 28, 1977.

P.L. 94-455, § 1205(a):
Added Code Sec. 7610(a), to read as above.

[Sec. 7610(b)]

(b) EXCEPTIONS.—No payment may be made under paragraph (2) of subsection (a) if—

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or

Office - Supreme Court, U.S.
FILED
SEP 17 1982
CLERK

No. 82-74

In the Supreme Court of the United States

OCTOBER TERM, 1982

MARVIN S. ANTELMAN, PETITIONER

v.

MICHAEL DECATALDO, REVENUE AGENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-74

MARVIN S. ANTELMAN, PETITIONER

v.

MICHAEL DECATALDO, REVENUE AGENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

In this Internal Revenue Service summons enforcement case, petitioner seeks review of the orders of the courts below denying intervention and refusing to quash the summons retroactively.

1. As part of an investigation into the income tax liabilities of Tivian Laboratories, Inc., respondent Revenue Agent Michael DeCataldo issued an Internal Revenue Service summons to respondents Industrial National Bank and Assistant Manager Kathy Lawson seeking all records in their possession relating to financial transactions in the name of Tivian Laboratories, Inc., and of a separate but related company known as Tivian Laboratories Co. d/b/a Tilaco Chemicals, LTD. After a hearing, the district court, on December 30, 1980, ordered enforcement of the summons (Pet. App. 25).

Thereafter, on April 16, 1981, petitioner moved to intervene in the proceedings in the district court on the ground that he was a shareholder and president of Tilaco Chemicals LTD. Petitioner also alleged that the summons was issued to examine the corporate records for the purpose of reviewing his own transactions with the corporations and that he was the subject of a criminal investigation by the Internal Revenue Service. Petitioner moved for a writ of injunction aimed at setting aside the summons. He also moved to compel discovery and to quash the summons. See Pet. App. 23. The district court denied the motion to intervene on the ground that the matter was res judicata. *Ibid.* The district court also denied petitioner's other post-judgment motions.

The court of appeals affirmed the district court's holding that petitioner's alleged status as a shareholder and corporate officer of Tilaco Chemicals, LTD. did not entitle him to intervene in the summons enforcement proceedings. The court of appeals also held that, with respect to his claim that he was the subject of a criminal investigation, petitioner had failed to carry the burden of demonstrating bad faith on the part of the Internal Revenue Service and that he had no right to intervene, or to the other relief sought (Pet. App. 23-24).[1]

2. The court of appeals correctly affirmed the orders of the district court. Subsequent to an order of enforcement and beyond the time for appealing that order, petitioner sought to intervene to oppose enforcement of the summons, asserting grounds of abuse of judicial process and violation

---

[1]Because petitioner's notice of appeal was filed beyond the time for appealing the order of enforcement, the court of appeals had no jurisdiction to consider petitioner's challenge to that order; the only issue before the court was whether the district court properly denied petitioner's post-judgment motions (Pet. App. 24 n.*).

of his constitutional rights. Petitioner's post-judgment motions were filed pursuant to Rules 60(b)(2) and 60(b)(3) of the Federal Rules of Civil Procedure. Such motions may be granted where a party presents newly discovered evidence or establishes that there was fraud or other misconduct of an adverse party that prevented the moving party from fully and fairly presenting his case. Neither of these conditions was met here. Accordingly, the district court clearly acted within its discretion in denying the motions. See, *e.g.*, *Jafree* v. *Scott*, 590 F. 2d 209, 212 (7th Cir. 1978); *Williams* v. *United States*, 577 F. 2d 930 (5th Cir. 1978); *Altman* v. *Connally*, 456 F. 2d 1114 (2d Cir. 1972).

Petitioner's assertions (Pet. 11-21) of violations of his constitutional rights are based upon his claim that alleged actions by the Internal Revenue Service, occurring subsequent to the order of enforcement, demonstrated the bad faith of the Internal Revenue Service. Petitioner offered no evidence whatsoever to support his allegations and thus the court of appeals correctly found that petitioner failed to demonstrate bad faith (Pet. App. 23-24). The summons was issued and served on the respondent bank seeking information concerning the civil income tax liability of the taxpayer corporation. No individuals were named as taxpayers. Indeed, there is no evidence in the record of any investigation, criminal or otherwise, into the personal tax liabilities of the petitioner. In short, petitioner has wholly failed to show any legally supportable justification for his attempted post-judgment intervention below.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

SEPTEMBER 1982

DOJ-1982-09